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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket Number LS–05–06]

RIN 0581–AC49

Changes in Fees for Voluntary Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees will be adjusted by this action to reflect the increased cost of providing service and to ensure that the MGC Branch operates on a financially self-supporting basis.

DATES: *Effective Date:* October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, MGC Branch, telephone number (720) 497–2550 or e-mail *Larry.Meadows@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing these services. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits, which account for 80 percent of the operating costs, with travel, training, and administrative costs making up the remainder. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. The operating loss for fiscal year (FY) 2005 totaled $1.8 million. Without a fee increase, the operating loss for FY 2006 is projected to be $1.1 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide meat grading and certification services.

This rule is necessary to offset decreased revenue hours and increased program operating expenses incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs, while providing the same or a higher level of assurance, employ fewer personnel and, therefore, generate fewer revenue hours as compared to traditional certification services.

MGC Branch operating expenses have increased due to: (1) Cyber Security upgrades mandated by the Department and system technologies; (2) mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since the last fee increase in 2003, the MGC Branch has made efforts to control operating costs by closing 3 field offices and reducing the number of support staff by 33 percent. The MGC Branch has also increased the use of computer information systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. This reduction in field offices and support personnel, and the increased use of automated systems to process data has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize the need for hourly fee increases in past years. However, these management efforts have not negated the need to maintain trust fund balances to assure operating expenses are met in the future.

Despite the cost reduction efforts, the MGC Branch incurred a $1.8 million operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase, the MGC Branch will lose approximately $6.5 million from FY 2006 through FY 2009, and totally deplete program reserves to the point of deficit operations (i.e. FY 2006, $1.1 million; FY 2007, $1.2 million; FY 2008, $1.8 million; and FY 2009, $2.4 million).

In view of the increased costs and decreased revenues, AMS will increase the hourly fees to cover the operating deficits. The base hourly fee for commitment applicants will increase from $55 to $61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants will increase from $64 to $71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee will increase from $70 to $78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee will increase from $110 to $122 and is charged to applicants for meat grading and certification services provided on legal holidays.

Executive Order 12866

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

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), AMS considered the economic impact of this proposed action on small entities and determined that it will not have a significant economic effect on a substantial number of small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 285 businesses, including 100 livestock slaughterers, 66 facilities that process federally donated products, 62 meat processors, 28 livestock producers and feeders, 9 brokers, 11 trade associations, and 9 State and Federal entities. Eighty seven percent of these businesses qualify as small entities; a company that employs less than 500 employees. Small entities generate approximately 33 percent of the MGC Branch's revenues and are under no obligation to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of carcass beef, lamb, pork, veal, and calf in accordance with the appropriate official U.S. Standard. The MGC Branch grades approximately 20.0 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yield of the products they purchase comply with the stated requirements. The MGC Branch certifies approximately 22.4 billion pounds of meat and meat products each year.

This action will raise the hourly fees charged to users of Federal meat grading and certification services. AMS estimates that this action will provide the MGC Branch an additional $210,210 in revenue per month in FY 2006. Since 245 small entities account for 33 percent of MGC Branch revenues, this action will result in an average increase of $65 per week per applicant. This action will increase revenues by almost $2.5 million per year and offset the projected losses of $1.1 million in FY 2006 and $1.2 million in FY 2007. Even with this action, the unit cost for MGC Branch service (revenue/total pounds graded and certified) will actually decrease from $0.0006 to $0.0005 per pound, due to increased projected grading and certification volumes.

This action is necessary to offset decreased revenue hours and increased program operating costs incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs employ fewer personnel, and, therefore, generate fewer revenue hours as compared to traditional certification services. The implementation of audit-based programs has decreased overall costs to smaller entities.

MGC Branch operating expenses have increased due to (1) Cyber Security upgrades mandated by the Department and system technologies; (2) congressionally mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since 2003, the MGC Branch has made efforts to control operating costs by closing three field offices and reducing the number of support staff by 33 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. The reduction in field offices and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and delay hourly fee increases.

Despite these cost reduction efforts and previous hourly fee increases, the MGC Branch incurred a $1.8 million operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase; the MGC Branch would lose approximately $6.5 million from FY 2006 through FY 2009 and totally deplete program reserves to the point of deficit operations.

In view of these increased costs, AMS will increase the hourly fees for Federal meat grading and certification services. The base hourly fee for commitment applicants will increase from $55 to $61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants will increase from $64 to $71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee will increase from $70 to $78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee will increase from $110 to $122 and is charged to applicants for meat grading and certification services provided on legal holidays.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect and would not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action will not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

Comments and Responses

On March 29, 2006, AMS published a proposed rule in the **Federal Register** to increase the fees for Federal meat grading and certification services and requested comments by May 30, 2006. The Agency received two comments.

The first respondent understood the value of grading and certification services that are provided to meat packers. The respondent expanded upon the dire straits of the beef industry since the closing of export markets in December 2003. The respondent expressed that larger packers, through their size and efficiencies are able to absorb costs more easily than small packers and indicated that the new MGC Branch fee increase would negatively impact small entities. Finally, the respondent requested that AMS postpone their request for a fee increase until the beef industry shows a solid recovery and stated that this would be beneficial to all parties involved.

The Agency response to the comment is as follows:

(1) *Postpone the fee increase:* The Agricultural Marketing Act of 1946 provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing service. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. In FY 2005, the MGC Branch incurred a $1.8 million operating loss. Without an hourly fee increase, the MGC Branch is projected to lose an additional $6.5 million through FY 2009 and totally deplete program reserves. By law, the program must recover the cost of providing grading and certification services. Since the Agency has implemented every reasonable measure to reduce expenses, a fee increase is the only avenue available to ensure revenues equal expenses on a sustaining basis.

(2) *Consider the impact of MGC Branch costs on small meat packers:* Voluntary Federal meat grading and certification services are provided to 285 businesses, including 100 livestock slaughterers, 66 facilities that process federally donated products, 62 meat processors, 28 livestock producers and feeders, 9 brokers, 11 trade associations, and 9 State and Federal entities. Eighty seven percent of these businesses qualify as small entities; a company that employs less than 500 employees. Small entities generate approximately 33 percent of the MGC Branch's revenues and are under no obligation to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

AMS is very aware of the impact that fees charged for meat grading and certification services have on all firms. In this regard, AMS attempts to provide cost-effective grading and certification services to small entities through methods which include, but are not limited to, cooperative agreements with States and cross utilization of other Federal employees in the local area. AMS will continue to explore these and other alternatives for providing cost-effective grading and certification services to small entities.

The second respondent addressed fees charged by the Food Safety and Inspection Service (FSIS) for voluntary slaughter inspection services. Accordingly, AMS will not address the comment in this final rule. The comment was forwarded to FSIS for their consideration.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

■ For the reasons set forth in the preamble, it is proposed that 7 CFR part 54 be amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for 7 CFR part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 54.27 is amended by:

§ 54.27 [Amended]

■ A. Removing in paragraph (a), ''$64'' and adding ''$71'' in its place, removing ''$70'' and adding ''$78'' in its place, and removing ''$110'' and adding ''$122'' in its place.

■ B. Removing in paragraph (b), ''$55'' and adding ''$61'' in its place, removing ''$70'' and adding ''$78'' in its place, and removing ''$110'' and adding ''$122'' in its place.

Dated: September 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–15853 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0081]

Japanese Beetle; Addition of Iowa to the List of Quarantined States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Japanese beetle quarantine and regulations by adding the State of Iowa to the list of quarantined States. That action was necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

DATES: Effective on September 27, 2006, we are adopting as a final rule the interim rule that became effective on June 21, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The Japanese beetle (*Popillia japonica*) feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–8 (referred to below as the regulations), quarantine the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the artificial spread of the Japanese beetle to noninfested States where the Japanese beetle could become established (referred to as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

In an interim rule[1] effective and published in the **Federal Register** on June 21, 2006 (71 FR 35491–35493, Docket No. APHIS–2006–0081), we amended the regulations by adding Iowa to the list of quarantined States in § 301.48.

Comments on the interim rule were required to be received on or before August 21, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

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

List of Subjects in 7 CFR Part 301

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

[1] To view the interim rule, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0081, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 35491–35493 on June 21, 2006.

Done in Washington, DC, this 21st day of September 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–15899 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2006–0107]

Spring Viremia of Carp; Import Restrictions on Certain Live Fish, Fertilized Eggs, and Gametes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of effective date.

SUMMARY: We recently amended the regulations to restrict the importation into the United States of live fish, fertilized eggs, and gametes of fish species that are susceptible to spring viremia of carp, a serious contagious viral disease of carp. That interim rule was scheduled to become effective on September 29, 2006. We are delaying that effective date by 30 days. This delay is needed to give importers and foreign exporters additional time to meet requirements of the rule.

DATES: The effective date for the interim rule amending 9 CFR part 93, published at 71 FR 51429, August 30, 2006, is delayed until October 30, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Merrill, Aquaculture Specialist, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–0649; or Dr. Jill B. Rolland, Fishery Biologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

Spring viremia of carp (SVC) is a disease of certain species of finfish, caused by an eponymous rhabdovirus. The following species are considered susceptible to SVC: Common carp, including koi (*Cyprinus carpio*), grass carp (*Ctenopharyngodon idellus*), silver carp (*Hypophthalmichthys molitrix*), bighead carp (*Aristichthys nobilis*), Crucian carp (*Carassius carassius*), goldfish (*Carassius auratus*), tench (*Tinca tinca*), and sheatfish (*Silurus glanis*). SVC was first reported in Yugoslavia in 1969 and has since spread to other European countries as well as Asia. SVC is considered extremely contagious, and there are currently no U.S.-approved vaccines or treatments for the virus.

On August 30, 2006, we published a final rule in the **Federal Register** (71 FR 51429–51437) amending 9 CFR part 93 by establishing regulations to restrict the importation into the United States of live fish, fertilized eggs, and gametes of fish species that are susceptible to spring viremia of carp, a serious contagious viral disease of carp. Under that rule, importers of SVC-susceptible species must obtain an import permit and a health certificate from the shipment's region of origin certifying that the live fish, fertilized eggs, or gametes originated in an SVC-free region. This certification must be supported by ongoing SVC surveillance for 2 years conducted under specific conditions. In addition, live fish, fertlized eggs, and gametes of SVC-susceptible species will be subject to other restrictions that they have not been in the past, such as having to be imported through designated ports of entry and meeting containment requirements for shipments that are in transit through the United States. Importers will also be subject to user fees for obtaining import permits and port of entry inspections. Live cultures of SVC virus, preserved SVC virus viral RNA or DNA, tissue samples containing viable SVC virus, or other specimens intended for diagnostic or research purposes and which contain viable SVC virus will also be allowed importation only under permit in accordance with 9 CFR part 122.

Delay in Effective Date

Since the rule's publication, APHIS has received requests from U.S. importers and foreign exporters of these fish species (which include koi and goldfish, two economically important commodities) as well as from a number of foreign government authorities seeking an additional period of time in which to prepare to meet these requirements. In response, we are delaying the effective date until October 30, 2006.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of September 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–8322 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580–AA93

Clear Title Technical Changes

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim rule.

SUMMARY: We are issuing this interim rule to allow States to use an approved unique identifier as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. We are making additional changes to the clear title regulations as required by amendments made by the 2002 Farm Bill. The primary effect of these changes will be to protect the identity of the producers of farm products. Secondary effects of the technical changes will be to improve the operation of the program and provide the States with more flexibility.

DATES: Effective Date: September 27, 2006.

Comment Date: We will consider comments that we receive by November 27, 2006.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Federal eRulemaking Portal: Go to *http://www.regulation.gov.* Follow the on-line instruction for submitting comments.

To read comments: All comments received will be made available for public review at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jens Knutson, Economist, Industry Analysis Division, USDA GIPSA, (202) 720–3128 or e-mail at *Jens.N.Knutson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the clear title program for the Secretary of Agriculture. The clear title program is authorized by Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) and requires that States implementing a central filing system for notification to the public of liens on farm products must have such systems certified by the Secretary of Agriculture. When someone purchases a farm product in one of the 19 states that currently have certified central filing systems, they can check for liens against that farm product through the State's central filing system. USDA, through GIPSA's Packers and Stockyards Program, certifies the State's Central Filing System.

Our regulations in 9 CFR part 205 (regulations) provide guidance to the States about the requirements for their clear title program and requirements for approval of their systems.

Changes to the Regulations

This interim final rule encompasses several changes to our clear title regulations that are mandated by changes to the clear title authorizing legislation. We discuss in the following section changes to authorizing legislation that require changes to our current clear title regulations and then identify the regulatory changes to be made. The changes are presented by topic rather than by section. Then, at the end of this document, we present the complete changes to 9 CFR part 205, Clear Title—Protection for Purchasers of Farm Products, which this interim rule implements.

Section 776 of Division A, Title VII, Public Law 108–447, amended Section 1324(c) of the Food Security Act of 1985 (7 U.S.C. 1631(c)) for the privacy protection of certain sellers of farm products to allow States to use ''an other approved unique identifier'' as an alternative to a social security number or Internal Revenue Service (IRS) taxpayer identification number in their systems providing clear title information. The amendment further specified that the term ''approved unique identifier'' means ''a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.''

One of the requirements in our current regulations is that the social security number or an IRS taxpayer identification number of the debtor must be provided. Sections 205.103 and 205.105 require (1) the social security number or IRS taxpayer identification number be included as necessary information on an effective financing statement (EFS) filed with the State and (2) the master list developed by the State must be able to be delivered to a registrant in numerical order by social security number or IRS taxpayer identification number.

We are revising the regulations to implement the addition of ''an other approved unique identifier'' made in the authorizing legislation. We considered the option of specifying what an approved unique identifier would be, but decided to allow each State the flexibility to request approval of the method or system used to select a unique identifier that will work best in its clear title program.

We have been in contact in recent months with several States interested in amending their clear title systems and believe sufficient interest exists in States' implementation of the legislatively-mandated changes to the clear title program—including the use of an approved unique identifier as an alternative to a social security or IRS taxpayer identification number in a State's EFS and clear title master list—to warrant this interim final rule at this time. If States opt to discontinue the publication of social security numbers as a means of identification in States' clear title master lists, the resulting increased privacy protection will benefit individuals identified in those master lists. Discontinuing the publication of social security numbers is an increasing practice in regulatory and business transactions throughout the United States.

We are making the following changes in the clear title regulations to allow the use of an approved unique identifier in the certified State systems providing clear title information:

- In section 205.1, Definitions, we are adding a definition for ''approved unique identifier''.
- In section 205.101, Certification—request and processing, we are adding a new paragraph (b)(11) to show what the State will be required to provide when applying to us for certification of its central filing system when it will use an approved unique identifier.
- In section 205.103, EFS—minimum information, we are revising paragraph (a)(5) to allow either a social security number, IRS taxpayer identification number, or other approved unique identifier of each debtor be included in the minimum information necessary on an EFS.
- In section 205.105, Master list and portion thereof distributed to registrants—format, we are revising paragraph (a) to allow an approved unique identifier to be used in place of a social security number or IRS taxpayer identification number for the numerically ordered information that the State's system must report.

Revisions to the regulations are also needed to correspond to the 2002 Farm Bill amendments. The 2002 Farm Bill amendments to Section 1324 of the Food Security Act relate to electronic filing, EFS content, and Central Filing System procedure. The intent of these amendments was to relax some signature requirements, clarify terms, and facilitate electronic filing of lenders' security interests. These technical modifications will improve the operation of the program and provide the States with more flexibility.

Specifically, the legislation:

(1) Allows the non-electronically reproduced copy of the EFS to be signed, authorized, or otherwise authenticated by the debtor and filed by the secured party in place of the requirement for the statement to be signed by both the debtor and the secured party and filed by the secured party;

(2) Allows the written amendments to the EFS to be signed, authorized, or otherwise authenticated by the debtor in place of the requirement for the statement to be signed and filed;

(3) Allows notices that an EFS has lapsed to be signed, authorized, or otherwise authenticated by the secured party in place of the requirement for the notice to be signed by the secured party;

(4) Allows the EFS to identify the county or parish in which the farm product is produced or located, instead of requiring a reasonable description of the property;

(5) Allows the written notice of the security interest to identify the county or parish in which the farm product is produced or located, instead of requiring a reasonable description of the property;

(6) Allows the written amendments to the security interest notice to be signed, authorized, or otherwise authenticated in place of the requirement for the amendment to be signed;

(7) Allows notice of lapse of the written notice of the security interest to be signed, authorized, or otherwise

authenticated in place of the requirement for the notice to be signed;

(8) Allows the notice of security interest to the commission merchant or selling agent to identify the county or parish in which the farm product is produced or located, instead of requiring a reasonable description of the property;

(9) Allows the written amendments to the notice of security interest to the commission merchant or selling agent to be signed, authorized, or otherwise authenticated in place of the requirement for the statement to be signed; and

(10) Allows the notice that the statement related to security interest has lapsed to be signed, authorized, or otherwise authenticated by the secured party in place of the requirement for the statement to be signed by the secured party.

In addition, the following miscellaneous nonsubstantive changes were made to the legislation:

a. Redesignated subsections after deleting a subsection,

b. inserted ''contains'' to start two subsections,

c. changed references to ''subparagraphs'' to ''subsections,''

d. replaced ''; and'' with a period in a final subsection, and

e. inserted the word ''and'' at the end of the next to the last subsections.

Our regulations currently include requirements about the information of the location of farm products related to the county or parish in which the farm product is produced and require a reasonable description of the property. We are making the following changes in the clear title regulations to correspond to the changes made in the legislation in reference to the location of the farm products:

• In section 205.103, EFS—minimum information, we are revising paragraph (a)(3) to allow the locations of the farm product to be included in the minimum information necessary on an EFS to be an identification of each county or parish in the same State where the farm product is produced or located.

• In section 205.104, Registration of buyer, commission merchant, or selling agency—minimum information, we are revising paragraph (a)(3) by adding the words ''or located'' after the word ''produced.''

• In section 205.105, Master list and portion thereof distributed to registrants—format, we are revising paragraph (a) to allow the State's system to deliver information for any farm product produced or located in any county or parish of the State.

• In section 205.207, ''Amount'' and ''reasonable description of the property,'' we are revising the heading to refer to the county or parish in which the property is located instead of a reasonable description of the property.

• In section 205.207, ''Amount'' and ''county or parish,'' we are revising paragraph (a) to specify that the county or parish in which the product is located or produced does not need to be shown on every EFS and master list entry.

• In section 205.207, ''Amount'' and ''county or parish,'' we are revising paragraph (c) to allow the option for any EFS and master list entry to identify each county or parish in which the farm product is produced or located.

• In section 205.207, ''Amount'' and ''county or parish,'' we are revising paragraph (e) to describe what additional information about the amount is sufficient.

• In section 205.210, Effect of EFS outside State in which filed, we are revising paragraph (b) to expand the ability to file an EFS to cover products in the system for the State in which it is produced or located.

Currently, the regulations require the secured party and debtor to sign an EFS filed on paper with the State and EFS amendments filed on paper documents. We are making the following changes in the clear title regulations to correspond to changes made in the legislation in reference to allowing alternatives to signatures and other changes related to options to providing information on paper, such as electronic information:

• In section 205.202, ''Effective financing statement'' or EFS, we are revising paragraph (b) to require an EFS to be signed, authorized, or otherwise authenticated only by the debtor.

• In section 205.209, Amendment or continuation of EFS, we are revising paragraph (c) to specify that if an amendment is filed on a paper document that it must be signed, authorized, or otherwise authenticated only by the debtor.

• In section 205.209, Amendment or continuation of EFS, we are revising paragraph (d) to specify that a continuation statement to continue the effective period of an EFS for 5 years need not be signed, authorized, or otherwise authenticated by the debtor.

Our current regulations refer to sections of the authorizing legislation that were renumbered in the 2002 Farm Bill amendments. We are making the following corrections in the clear title regulations to correspond to changes made in the legislation:

• In sections 205.106, 205.206, and 205.207, we are correcting the references to subsection (c)(4)(D)(iv) to refer to subsection (c)(4)(C)(iv).

• In section 205.107, we are correcting the reference to subsection (c)(4)(F) to refer to subsection (c)(4)(E).

• In section 205.203, we are correcting the reference to subsection (c)(4)(D) to refer to subsection (c)(4)(C).

• In section 205.205, we are correcting both of the references to subsection (c)(4)(H) to refer to subsection (c)(4)(G).

• In section 205.209, we are correcting both of the references to subsection (c)(4)(E) to refer to subsection (c)(4)(D).

We are also making several nonsubstantive changes to our regulations. In keeping with the guidance the Office of the Federal Register provides for listing definitions, we are deleting the lettered paragraph designations for the definitions in section 205.1 and rearranging the definitions in alphabetical order of the terms being defined.

Information collection activities, which include recordkeeping, reporting, and third party disclosure, are reviewed and approved by the Office of Management and Budget (OMB). We have approval from OMB for the information collection activities related to the clear title program; this approval was granted under OMB control number 0580–0016. OMB grants information collection approval for no more than 3 years at a time; the current approval for the clear title program expires on November 30, 2007. To comply with the requirement to display the control numbers assigned by OMB approving the information collection activities, we are adding the control number at the end of sections 205.101, 205.102, 205.103, 205.104, 205.105, 205.106, 205.107, 205.202, 205.203, 205.204, 205.206, 205.207, 205.208, 205.209, and 205.213 for which the information collection activities have been approved.

Section 1324 of the Food Security Act of 1985 is the authorizing legislation for the clear title program. Throughout the regulations in 9 CFR part 205 the term ''the Section'' is used, as defined in 9 CFR 205.1, to mean Section 1324 of the Food Security Act of 1985. In the regulation in 9 CFR 205.101 (e), the term ''the Act'' is used, without having been defined or any other clarifying information. For consistency with the rest of the clear title regulations, we are replacing the term ''the Act'' with the term ''the Section'' both times it appears in 9 CFR 205.101 (e).

Finally, we are making minor editorial corrections in sections 205.101 and 205.206. In section 205.101, we are

(1) inserting a serial comma in the list in paragraph (11)(ii) and (2) correcting the reference to the Agency and program in paragraph (c). In section 205.206, we are removing an unnecessary comma.

Interim Rule

We are issuing an interim rule with request for comments rather than a proposed rule because the Federal statutory language governing the operation of States' clear title programs, and hence GIPSA's certification of these programs, has changed, and GIPSA's clear title regulations must reflect these statutory changes. Further, there is a strong public interest in issuing this rule as an interim rule. Several States have contacted GIPSA in recent months with requests to approve amendments to their clear title programs that reflect some, if not all, of the statutory changes governing the operation of the clear title program. GIPSA has approved all such State requests to amend their clear title requirements if the amendments adhere to the amended statutory language governing clear title programs. Additionally, GIPSA believes the regulatory changes in this interim rule are in the public interest to the extent they reduce the possibility of identity theft by allowing the use of approved unique identifiers in lieu of social security numbers or IRS taxpayer identification numbers in States' published clear title master lists. The regulatory changes are also in the public interest in that they facilitate timelier and less restrictive operation of States' clear title programs.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) designated this interim rule as not significant for the purposes of Executive Order 12866. This interim rule changes GIPSA's clear title regulations by allowing the use of approved unique identifiers in place of the former requirement that States use debtors' social security numbers or IRS taxpayer identification numbers. The interim rule also makes changes to the clear title regulations as required by amendments made by the 2002 Farm Bill. These Farm Bill technical changes to the clear title program (1) facilitate electronic transmission of lien notices in States that have adopted central filing systems for farm products by no longer requiring signatures of the secured party and debtor, (2) alter the required description of products by allowing notices to indicate where a product is produced or located rather than only where it is produced, and (3) incorporate minor editorial changes.

The parties primarily affected by the changes are producers and purchasers of farm products, State Secretaries of State in those States operating GIPSA-certified clear title central filing systems, and lending institutions in States or operating in States that have GIPSA-certified clear title central filing systems. There are 19 States currently operating clear title central filing systems certified by GIPSA. Some of these States' clear title central filing systems cover all farm products produced in the State, while other State's systems cover only certain farm products. A listing of the States with GIPSA-certified clear title certified central filing systems is available through the Internet on the GIPSA Web site (go to *http://www.gipsa/usda/gov,* click on ''Learn About Clear Title Farm Products,'' go to''Regulations Under the Food Security Act''at the bottom of the page and then click on the highlighted ''Clear Title Notices''). Farm products covered by a State's clear title central filing system are also identified through the GIPSA Web site.

This interim rule's most significant benefit is enhanced protection of the personal identities of debtors, primarily producers of farm products, whose social security numbers or, if they are incorporated as a business, IRS taxpayer identification numbers are now provided on States' master lists. These master lists, whose purpose is to provide buyers of farm products the ability to check for liens against the farm product the buyer is interested in, are made available to the public in different ways by different States. By providing States the alternative of identifying debtors by an approved unique identifier other than by social security number or IRS taxpayer identification number, GIPSA believes this interim rule mitigates the risk of identity theft.

The producers of farm products, generally the debtors in a State's central filing system, and lenders will also benefit from the added flexibility of not having to sign an EFS and related documents, thus facilitating their ability to file these documents. The ability to authorize or otherwise authenticate the EFS may also save them time and money in reproduction and delivery expenses. This interim rule's revision of some current signature requirements, which will enhance a lender's electronic filing of security interests, and the interim rule's simplification of the description of the location of the farm product should also enhance the timeliness and effectiveness of both a State's operation of, and a farm product buyer's use of, a State's GIPSA-certified clear title central filing system.

Costs to implement this interim rule's changes will fall primarily on State Departments of State that maintain GIPSA-certified clear title central filing systems. Costs associated with implementing the changes specified in this interim rule involve the States' development of unique identifiers, changing how debtor's and lender's documents can be submitted to the States, and approval by GIPSA of these modified clear title central filing systems if the changes take the form of amendments to a GIPSA-certified clear title central filing system. If the changes result in a State developing a new central filing system, that system will have to be certified by GIPSA. We believe most State changes will come to GIPSA as requests for amendments to existing central filing systems. Given the variety of State-specific systems, it is difficult to estimate the cost of these changes, but we expect each State that decides to implement changes will do so in the most cost effective way for its system. State Departments of State are not classified as small entities.

Lenders to producers of farm products may experience some costs, which GIPSA anticipates should be relatively small in those instances where they do arise, in converting their systems to accommodate a State's choice to use approved unique identifiers as an alternative to social security numbers. We do not know how many lenders might be affected by these changes, and have no reason to believe that small lenders will be unduly affected by them relative to larger lenders. The Small Business Administration (SBA) identifies small business size standards for business entities grouped according to the North American Industry Classification System (NAICS) codes, and has identified small business lending institutions for commercial banking (NAICS subsector 445) as those entities with assets of $165 million or less. Small business consumer lending and mortgage and non-mortgage loan brokers (NAICS 522291 and 522310, respectively) have assets of $6.5 million or less. GIPSA believes the costs to lenders to accommodate a State?s choice to use approved unique identifiers, whatever they might be, will be offset by the lenders' cost and time savings associated with changed signature requirements that facilitate timelier and more efficient transmission of an EFS.

Producers of farm products and buyers of farm products should experience no additional costs associated with this interim rule. The

majority of these producers and buyers of farm products are small entities.

The SBA small business size standards vary for producers of farm products, based on the products, but for most agricultural producers the small business threshold is $0.75 million in annual receipts for crop and animal production (NAICS 111110—112990). The 2002 Agricultural Census reported 2,100,309 farms had annual sales of farm products totaling less than $1 million, which is the census' closest sales category to SBA's definition of small business producers of farm products having annual receipts less than $0.75 million. These small business farms accounted for 98 percent of all farms reported in the census.

Many buyers of farm products will be the same producers discussed above, the majority of whom SBA defines as small entities. SBA's small business size standards for other buyers of farm products vary depending on industry sector, and within sectors on the type of company. For example, SBA's small business threshold for food manufacturers (NAICS subsector 311) can be 500, 750, or 1,000 employees, depending on the type of food manufacturer. SBA's small business threshold for merchant wholesalers of non-durable goods (NAICS subsector 424) is 100 employees. SBA's small business thresholds for food and beverage stores are $6.5 million and $25 million, depending on the type of store.

Small entities affected by this interim rule include primarily producers of farm products who will no longer have their social security numbers posted for public viewing by State certified central filing system that opt to use an other approved unique identifier.

GIPSA foresees no substantive change to reporting or recordkeeping burden imposed on small entities resulting from this interim rule.

Therefore, I certify that this interim rule will have no significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12988

This interim rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This interim rule will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this interim rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this interim rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501—3520), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0580–0016. This interim rule will add the OMB control number at the end of each section of the regulations previously approved for information collection activities.

E-Government Act Compliance

We are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 9 CFR Part 205

Agricultural commodities, Archives and records, Intergovernmental relations, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, GIPSA amends 9 CFR part 205 as follows:

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

■ 1. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 1631; 7 CFR 2.22 and 2.81.

■ 2. Amend § 205.1 as follows:
■ a. Remove paragraph designations (a) through (i) and arrange the terms in alphabetical order.
■ b. Add a definition of ''approved unique identifier,'' in alphabetical order, to read as follows:

§ 205.1 Definitions.

* * * * *

Approved Unique Identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.

* * * * *

■ 3. Amend § 205.101 as follows:
■ a. Remove the word ''and'' at the end of paragraph (b)(10).
■ b. Redesignate paragraph (b)(11) as paragraph (b)(12).
■ c. Add new paragraph (b)(11) to read as set forth below.
■ d. In newly redesignated paragraph, (b)(12)(ii), add a comma after the word ''rules''.
■ e. In paragraph (c), remove the words ''Grain Inspection, Packers and Stockyards Administration Packers and Stockyards Programs'' and add the words ''Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA)'' in their place.
■ f. In paragraph (e), removing the words ''the Act'' and adding the words ''the Section'' in their place both times they appear.
■ g. At the end of the section, add an information collection citation to read as follows:

§ 205.101 Certification—request and processing.

* * * * *

(b) * * *

(11) If a unique identifier will be used in the system, explain how the unique identifier will be selected and how it will be used by the system, including, but not limited to, how lists will be organized, and how searches may be performed, using the unique identifier.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 4. Amend § 205.102 by adding an information collection citation at the end of the section to read as follows:

§ 205.102 Name of person subjecting a farm product to a security interest, on EFS and master list—format.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 5. Amend § 205.103, as follows:
■ a. Revise paragraph (a)(3) to read as set forth below.
■ b. Revise paragraph (a)(5), to read as set forth below.
■ c. Amend § 205.103 by adding an information collection citation at the end of the section to read as set forth below:

§ 205.103 EFS—minimum information.

(a) * * *

(3) Each county or parish in the same State where the farm product is produced or located;

(4) * * *

(5) Social security number or other approved unique identifier or, if other than a natural person, IRS taxpayer identification number or other approved unique identifier of each such person;

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 6. Amend § 205.104 as follows:
■ a. In paragraph, (a)(3), add the words ''or located'' after the word ''produced''.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.104 Registration of buyer, commission merchant, or selling agent—minimum information.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 7. Amend § 205.105 as follows:
■ a. In paragraph (a), in the first sentence, add the words ''or located'' after the word ''produced''.
■ b. In paragraph (a), in both of the following places in the last sentence, add the words ''or approved unique identifier'' after ''in numerical order by social security number'' and after ''IRS taxpayer identification number''.
■ c. At the end of the section, add an information collection citation to read as follows:

§ 205.105 Master list and portion thereof distributed to registrants—format.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 8. Amend § 205.106 as follows:
■ a. Remove the words ''subsection (c)(4)(D)(iv)'' and add the words ''subsection (c)(4)(C)(iv)'' in their place.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.106 Farm products.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 9. Amend § 205.107
■ a. In paragraph (b), remove the words ''subsection (c)(4)(F)'' and add the words ''subsection (c)(4)(E)'' in their place.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.107 Crop year.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 10. Amend § 205.202 as follows:
■ a. In paragraph (b), remove the words ''signed by both the secured party and the debtor,'' and add the words ''signed, authorized, or otherwise authenticated by the debtor'' in their place.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.202 ''Effective financing statement'' or EFS.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 11. Amend § 205.203 as follows:
■ a. Remove the words ''subsection (c)(4)(D)'' and add the words ''subsection (c)(4)(C)'' in their place.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.203 Place of filing EFS.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 12. Amend § 205.204 by adding at the end of the section an information collection citation to read as follows:

§ 205.204 Filing ''notice'' of EFS.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

§ 205.205 [Amended]

■ 13. Amend § 205.205, by removing the words ''subsection (c)(4)(H)'' and adding the words ''subsection (c)(4)(G)'' in their place both times they appear.
■ 14. Amend § 205.206 as follows:
■ a. In paragraph (a), remove the comma immediately after the words ''subsection (c)(2)''; remove the words ''subsection (c)(4)(D)(iv)'' and add the words ''subsection (c)(4)(C)(iv)'' in their place.
■ b. At the end of the section, add an information collection citation to read as follows:

§ 205.206 Farm products.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 15. Amend § 205.207 as follows:
■ a. Revise the section heading to read as set forth below.
■ b. In paragraph (a), remove the words ''and ''reasonable description of the property including county or parish,'''' and add the words ''and ''county or parish,'''' in their place.
■ c. In paragraph (a), remove the words ''subsections (c)(4)(D)(iv)'' and add the words ''subsection (c)(4)(C)(iv)'' in their place.
■ d. In paragraph (c), remove the words ''product is or is to be produced'' and add the words ''product is produced or located'' in their place.
■ e. In paragraph (e), in the first sentence, remove the words ''and property''.
■ f. In paragraph (e), in the last sentence, remove the words ''and location''.
■ g. At the end of the section, add an information collection citation to read as follows:

§ 205.207 ''Amount'' and ''County or parish''.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 16. Amend § 205.208 by adding at the end of the section an information collection citation to read as follows:

§ 205.208 Distribution of portions of master list—registration—information to non-registrants on request.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

■ 17. Amend § 205.209 as follows:
■ a. In paragraph (a), remove the words ''subsection (c)(4)(E)'' and add the words ''subsection (c)(4)(D)'' in their place.
■ b. Revise paragraph (c), to read as set forth below.
■ c. In paragraph (d), remove the words ''contain the signature of the debtor'' and add the words ''be signed, authorized, or otherwise authenticated by the debtor'' in their place.
■ d. At the end of the section, add an information collection citation to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(c) The amendment must be filed in the same manner as the original filing. Note the requirement of subsection (c)(4)(D). The amendment may be filed electronically provided a State allows electronic filing of financing statements without the signature of the debtor under applicable State law under provisions of the Uniform Commercial Code. An electronically filed amendment need not be signed. However, if an original or reproduced paper document is filed, the amendment must be signed, authorized, or otherwise authenticated by the debtor, and be filed by the secured party.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

§ 205.210 [Amended]

■ 18. Amend § 205.210, in paragraph, (b), add the words ''or located'' after the word ''produced'' both times it appears.

■ 19. Amend § 205.213 by adding an information collection citation at the end of the section to read as follows:

§ 205.213 Obligations subject—''person indebted''—''debtor''.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0016)

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 06–8268 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150–AH96

Facility Change Process Involving Items Relied on for Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify a requirement pertaining to items relied on for safety (IROFS). This rulemaking corrects an inconsistency in the regulations pertaining to IROFS.

DATES: The final rule is effective on December 11, 2006, unless significant adverse comments are received by October 27, 2006. As detailed in the Procedural Background section, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the NRC receives any significant adverse comments, the NRC will publish a document that withdraws the direct final rule and addresses the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH96) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233, e-mail *ant@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NRC's regulations at 10 CFR part 70 govern the domestic licensing of special nuclear material (SNM), including the licensing of uranium enrichment facilities. On September 18, 2000 (65 FR 56211), the NRC added subpart H requirements (§§ 70.60 to 70.76) to 10 CFR part 70. Subpart H applies to licensees possessing greater than a critical mass of SNM, such as those engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, enriched uranium hexafluoride conversion, plutonium processing, fabrication of mixed-oxide fuel or fuel assemblies, and the scrap recovery of SNM. Section 70.61 sets forth performance requirements, and requires that the controls needed to meet the performance requirements be designated as IROFS. Section 70.62 requires the establishment of a safety program based on an integrated safety analysis (ISA). Under § 70.65, a summary of the ISA must be submitted to the NRC for approval, and the summary must contain the IROFS upon which the licensee relies in order to meet the performance requirements. In § 70.4, the definition of IROFS specifies that, in addition to the IROFS needed to meet the performance requirements in § 70.61 (i.e., the minimum set), a licensee may designate additional IROFS (i.e., beyond those in the minimum set necessary for compliance with the performance requirements).

The only revision to the subpart H requirements now being made is to 10 CFR 70.72(c)(2), as discussed further in this document.

Discussion

Section 70.72 contains requirements which control changes licensees (subject to subpart H) make to their facilities, and specifies criteria for determining if these changes require the NRC staff's review and approval before they are made. Section 70.72(c)(2) specifies that a licensee may remove an IROFS that is listed in the ISA summary, without prior NRC approval, if the licensee replaces the IROFS with an equivalent replacement of the safety function. Unlike other subpart H provisions (i.e., § 70.72(c)(3) and paragraphs (a)(4) and (a)(5) of Appendix A to Part 70), which distinguish between the minimum set of IROFS needed to meet the performance requirements and the larger set of IROFS a licensee may choose to identify, § 70.72(c)(2) does not make this distinction in stating as follows:

> (c) The licensee may make changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel, without prior Commission approval, if the change * * *
>
> (2) Does not remove, without at least an equivalent replacement of the safety function, an item relied on for safety that is listed in the integrated safety analysis summary.

Questions have arisen about whether changes involving licensee-identified IROFS that are not needed to meet the

performance requirements in § 70.61 require an equivalent replacement of the safety function.

The staff is thus adding the phrase ''and is necessary for compliance with the performance requirements of § 70.61'' to the end of § 70.72(c)(2).

This revision clarifies that if an IROFS is not needed to meet the § 70.61 performance requirements, a licensee may remove or replace the IROFS without NRC staff's approval and without showing equivalent replacement of the safety function. This change does not affect IROFS needed to meet performance requirements. If a licensee intends to remove or replace an IROFS needed to meet performance requirements, then the licensee must obtain NRC staff's pre-approval before making the change, unless the licensee has demonstrated with on-site documentation that the replacement or removal of the IROFS could be done with equivalent replacement of the safety function of the IROFS.

Procedural Background

This rulemaking will become effective on December 11, 2006. However, if the NRC receives significant adverse comments by October 27, 2006, the NRC will publish a document that withdraws the direct final rule and addresses the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this portion of regulations is designated Category ''NRC'' and therefore is not a matter of Compatibility.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is amending its regulations to clarify that the requirement in § 70.72(c)(2) applies only to the set of IROFS that are necessary to meet the § 70.61 performance requirements (i.e., the minimum set), and does not apply to IROFS beyond those in the minimum set. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule decreases the burden on licensees to update the on-site documentation when a change covered by § 70.72 is made. The annual public burden reduction for this information collection is estimated to average 10 hours for each 8 licensees. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0009.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor non-substantive amendment; it has insignificant economic impact on NRC licensees and the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely makes minor changes to the facility change process involving items relied on for safety. Additionally, the 10 CFR part 70 subpart H licensees affected by this rule are large organizations that do not fall within the definition of a small business as defined in the Regulatory Flexibility Act of the NRC's regulations (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 70

Hazardous materials transportation, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

■ For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 1. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 2. In § 70.72, paragraph (c)(2) is revised to read as follows:

§ 70.72 Facility changes and change process.

* * * * *

(c) * * *

(2) Does not remove, without at least an equivalent replacement of the safety function, an item relied on for safety that is listed in the integrated safety analysis summary and is necessary for compliance with the performance requirements of § 70.61;

* * * * *

Dated at Rockville, Maryland, this 13th day of September 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06–8270 Filed 9–26–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Amprolium Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (ANADA) filed by IVX Animal Health, Inc. The ANADA provides for use of amprolium solution to make medicated drinking water or as a drench for the prevention or treatment of coccidiosis in calves.

DATES: This rule is effective September 27, 2006.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827-0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed ANADA 200–389 that provides for the use of Amprolium 9.6% Oral Solution to make medicated drinking water or as a drench for the prevention or treatment of coccidiosis in calves. IVX Animal Health's Amprolium 9.6% Oral Solution is approved as a generic copy of Merial Ltd.'s CORID (amprolium) 9.6% Solution approved under NADA 13–149. The ANADA is approved as of September 6, 2006, and the regulations are amended in 21 CFR 520.100 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

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

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Revise § 520.100 to read as follows:

§ 520.100 Amprolium.

(a) *Specifications*—(1) Each milliliter of solution contains 96 milligrams (mg) amprolium (9.6 percent solution).

(2) Each gram of powder contains 200 mg amprolium (20 percent).

(3) Each ounce (28.4 grams) of crumbles contains 355 mg amprolium (1.25 percent).

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter.

(1) No. 050604 for use of products described in paragraph (a) of this section as in paragraph (e) of this section.

(2) No. 051311 for use of product described in paragraph (a)(1) of this section as in paragraph (e)(1) of this section.

(3) No. 059130 for use of product described in paragraph (a)(1) of this section as in paragraph (e)(2) of this section.

(c) *Related tolerances*. See § 556.50 of this chapter.

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

(e) *Conditions of use*—(1) *Chickens and turkeys*. It is used in drinking water as follows:

(i) *Amount*. Administer at the 0.012 percent level in drinking water as soon as coccidiosis is diagnosed and continue for 3 to 5 days (in severe outbreaks, give amprolium at the 0.024 percent level); continue with 0.006 percent amprolium-medicated water for an additional 1 to 2 weeks.

(ii)*Indications for use*. For the treatment of coccidiosis.

(iii) *Limitations*. Use as the sole source of amprolium.

(2) *Calves*. Administer crumbles top-dressed on or thoroughly mixed in the

daily feed ration; administer concentrate solution or soluble powder as a drench or in drinking water as follows:

(i) *Indications for use and amounts*—(A) As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, administer 5 mg per kilogram (mg/kg) body weight in drinking water for 21 days during periods of exposure or when experience indicates that coccidiosis is likely to be a hazard.

(B) As an aid in the treatment of coccidiosis caused by *E. bovis* and *E. zuernii*, administer 10 mg/kg body weight in drinking water for 5 days.

(ii) *Limitations*. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Use as the sole source of amprolium.

§ 520.100a [Removed]

■ 3. Remove § 520.100a.

§ 520.100b [Removed]

■ 4. Remove § 520.100b.

§ 520.100c [Removed]

■ 5. Remove § 520.100c.

Dated: September 18, 2006.

Bernadette A. Dunham,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–8275 Filed 9–26–06; 8:45 am]

BILLING CODE 4160–01–S

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) revises its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The regulations contain new provisions to comply with Executive Order 13392. In addition, the regulations have been updated to reflect changes in OSHRC's policies and procedures. As a result of these revisions, the public will have a clearer understanding of OSHRC's policies and procedures implementing the FOIA.

DATES: This rule is effective on October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Jin H. Kim, Attorney-Advisor, Office of the General Counsel, 1120 20th Street, NW., Ninth Floor, Washington, DC 20036–3457. Telephone: (202) 606–5410. Fax: (202) 606–5417. E-mail: *jkim@oshrc.gov*.

SUPPLEMENTARY INFORMATION: OSHRC is publishing a final rule for regulations implementing the FOIA. On July 21, 2006, OSHRC published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to OSHRC's regulations at 29 CFR part 2201, implementing the FOIA, 5 U.S.C. 552, as amended. 71 FR 41384, Jul. 21, 2006. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. OSHRC received no public comments. OSHRC has reviewed the proposed regulations and has only changed the regulatory text in this final rule to update the contact information in 29 CFR 2201.3(d), correct the cross-references in 29 CFR 2201.4(c) and (d), and add cross-references to Appendix A in 29 CFR 2201.7. All other provisions in the regulatory text are the same as in the NPRM, and OSHRC adopts them in this final rule.

I. Background

As mentioned in the preamble to the proposed regulations, OSHRC is making several substantive and technical revisions to its regulations to (1) Comply with Executive Order 13392 (E.O. 13392), 70 FR 75373, Dec. 19, 2005, (2) reflect recent changes in OSHRC's policies and procedures as they relate to the processing of FOIA requests, and (3) make purely technical or clarifying changes in phrasing and nomenclature. 71 FR 41384, Jul. 21, 2006.

OSHRC's revisions to its FOIA regulations, including the addition of new provisions and the modification of existing provisions, comply with the requirements of E.O. 13392. See 70 FR at 41384–85. In issuing E.O. 13392, the President directed each agency to ensure that its FOIA operations are ''citizen-centered'' and ''results-oriented.'' In order to achieve these goals, E.O. 13392 requires each agency head to designate a Chief FOIA Officer, who has agency-wide responsibility for the efficient and appropriate compliance with the FOIA. As part of his or her duties under E.O. 13392, the Chief FOIA Officer must review the agency's FOIA operations and identify any areas for improvement. In addition, E.O. 13392 requires agencies to establish FOIA Requester Service Centers to enable any FOIA requester to seek information concerning the status of his or her FOIA request, as well as appropriate information about the agency's FOIA response. E.O. 13392 further requires agencies to designate, as part of the FOIA Requester Service Center, FOIA Public Liaisons to serve as the supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the FOIA Requester Service Center, following an initial response to the FOIA request. Therefore, OSHRC revises its regulations implementing the FOIA to comply fully with E.O. 13392.

Furthermore, based on the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC also proposed revisions to its rule to reflect recent changes in OSHRC's policies and procedures as they relate to the processing of FOIA requests. As mentioned in the preamble to the NPRM, OSHRC moved all FOIA processing from its Office of Administration to the Office of the General Counsel at the beginning of this fiscal year (FY 2006). 71 FR at 41385. Currently, paralegals and attorneys, who have received specialized FOIA training, are now handling all FOIA requests. These revised regulations reflect changes in OSHRC's policies and procedures, which will make the processing of FOIA requests more efficient and responsive.

Finally, as specified in the preamble to the NPRM, OSHRC revises its regulations to correct grammatical errors, change nomenclature, renumber sections and paragraphs as a result of deleting and adding sections and paragraphs to the regulations, update regulatory cross-references, and clarify sentences. 71 FR at 41384–87.

II. Section-by-Section Analysis

OSHRC revises § 2201.1 to correct a grammatical error in the section heading and to add abbreviations for OSHRC and FOIA. OSHRC has also made similar changes throughout the regulations and corrected other grammatical errors, as well as changed nomenclature, such as FOIA Disclosure Officer, and updated regulatory cross-references. 71 FR at 41384–88.

In § 2201.2, OSHRC adds a sentence to the end of the section to provide additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the Commission. This is consistent with section 12(e) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 661(e).

OSHRC revises the delegation of FOIA-related duties in § 2201.3 to reflect the changes required by E.O. 13392. First, in paragraph (a), the Chairman delegates to the Chief FOIA

Officer the authority to act on all requests for agency records. Further, reference to the alternate designations is removed. Second, in paragraph (b), the Chief FOIA Officer designates the agency's FOIA Disclosure Officer(s) to process all FOIA requests. Third, in paragraph (c), the Chief FOIA Officer designates the FOIA Public Liaison(s) to address any concerns about the service a FOIA requester has received following an initial response by the agency. Finally, in paragraph (d), OSHRC identifies the FOIA Disclosure Officer(s) and FOIA Public Liaison(s) as serving in the agency's FOIA Requester Service Center located at OSHRC's national office in Washington, DC, and provides the address and telephone number to contact the FOIA Requester Service Center. Since publishing the NPRM, OSHRC decided to add the specific room number of the FOIA Requester Service Center in paragraph (d) to provide FOIA requesters more specific information about the location of the FOIA Requester Service Center. In addition, OSHRC is changing the telephone number of the FOIA Requester Service Center to (202) 606–5700, which will be dedicated only to FOIA-related matters. Under OSHRC's new procedures, the FOIA Disclosure Officer(s) will handle all initial responses to FOIA requests. The FOIA Public Liaison(s), who must function in a supervisory capacity, will ensure appropriate communication between FOIA requesters and FOIA Disclosure Officer(s). These changes will help ensure that OSHRC's FOIA operations are ''citizen-centered'' and ''results-oriented'' as directed in E.O. 13392.

In addition to the changes discussed above, OSHRC eliminates the language in § 2201.3 that referred to the handling of requests for copies of individual decisions because copies of Commission decisions have been placed on OSHRC's Web site for the public's convenience, pursuant to the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, 110 Stat. 3048 (codified as amended in 5 U.S.C. 552) (e-FOIA). OSHRC further eliminates the language in § 2201.3 that referred to the handling of ''all other information requests'' because this information is covered under revised § 2201.5(a); thus, its inclusion in § 2201.3 is redundant.

In § 2201.4, OSHRC adds new paragraphs (c)(3) and (c)(4) to reflect the language of the FOIA and corrects cross-references within the section consistent with the statute. See 5 U.S.C. 552(a)(2). OSHRC also adds a new paragraph (e) to provide definitions relevant to 29 CFR part 2201 that are consistent with other agencies' FOIA regulations. As noted in the preamble to the NPRM, these nine definitions clarify certain FOIA terminology but in no way change how OSHRC processes FOIA requests. 71 FR at 41385. The terms include: ''commercial use request,'' ''direct costs,'' ''duplication,'' ''education institution,'' ''noncommercial scientific institution,'' ''representative of the news media, or media requester,'' ''review,'' ''search,'' and ''working day.'' The terms have been defined using standard language consistent with the statute, including the incorporation of minor technical modifications from the FOIA regulations of several other government agencies, including the Department of Justice (28 CFR part 16) and the Office of Management and Budget (OMB) (5 CFR part 1303). OSHRC also includes a definition for ''working day,'' which is not defined in other government agencies' FOIA regulations, in order to clarify the FOIA's calculation of time.

OSHRC removes the text of § 2201.5 in its entirety because it is no longer necessary. OSHRC had a policy of providing a hard copy of a single decision before the advent of the Internet and e-FOIA. Pursuant to e-FOIA, OSHRC has placed Commission decisions on OSHRC's Web site, *http://www.oshrc.gov,* for the public's convenience. Therefore, OSHRC removes § 2201.5 in its entirety.

In new § 2201.5, formerly § 2201.6, OSHRC eliminates paragraph (a) in its entirety because OSHRC has placed most of this information on its Web site for the public's convenience pursuant to e-FOIA. In new paragraph (a), formerly paragraph (b), which also has a new paragraph heading, ''Requests for information,'' OSHRC modifies the language to clearly delineate the procedures for making FOIA requests. All requests for information must be made in writing with ''Freedom of Information Act Request'' printed on the request's envelope or cover as well as the request itself, and addressed to the FOIA Disclosure Officer. In addition, FOIA requests must describe the record requested to the fullest extent possible and specify the preferred form or format of the response. As provided in the revised regulation, OSHRC shall try to accommodate requesters as to form or format when possible, and if no form or format is specified, OSHRC shall respond in the form or format that is most accessible to OSHRC. This new language is easier to understand and clarifies the procedures for requesting records. Further, OSHRC deletes paragraph (d) (Specificity required) because information in this deleted paragraph is now incorporated in paragraph (a) of this section.

In new § 2201.6, formerly § 2201.7, OSHRC deletes in the introductory text of paragraph (b) the phrase ''telephonic notice'' when discussing ''extensions of response time in usual circumstances'' beyond the allowable time because the FOIA requires written notice under 5 U.S.C. 552(a)(6)(B). Further, OSHRC modifies paragraph (b)(1) to reflect the precise locations of OSHRC records—OSHRC's national office, regional offices and an off-site storage. In paragraph (b)(3), OSHRC deletes the phrase ''or among two or more components within the Commission having substantial subject-matter interest in the request'' because this phrase is unnecessary to OSHRC's FOIA operations. For consistency purposes, OSHRC will now require the FOIA Disclosure Officer(s) to provide written notice to FOIA requesters for additional extensions of time and whenever the estimated time to process a FOIA request substantially changes in paragraphs (c) and (d)(3), respectively. By providing written notice to requesters in these circumstances, OSHRC believes it would improve OSHRC's communication with requesters.

In paragraph (d) of § 2201.6, formerly § 2201.7, OSHRC renames the heading from ''multitrack processing'' to ''two-track processing'' to describe more accurately OSHRC's processing of FOIA requests. Further, in order to streamline the FOIA rules and make them more user-friendly, OSHRC deletes paragraph (e)(4), as well as paragraph (g) and incorporates that information in new § 2201.9 (Appeal of denials). New § 2201.9 will apply to all appeals of denials related to FOIA requests (*i.e.*, requests for records, requests for expedited processing, and/or requests for fee waiver).

In paragraph (f), OSHRC consolidates all denials related to FOIA requests (*i.e.*, requests for records, requests for expedited processing, and/or requests for fee waiver) to streamline the rules and make them more user-friendly. Finally, OSHRC revises paragraph (f) to closely track the language of the FOIA, 5 U.S.C. 552(a)(6)(C)(i) and (F), by requiring the FOIA Disclosure Officer(s) to provide the reason for a denial, a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), the name and title or position of the person responsible for the denial of the request, and also notify the requester of the right to appeal the determination in the written notice of denial.

OSHRC modifies paragraph (g), formerly paragraph (h), to require

written justification for deletions within a record because the FOIA states that ''the justification for the deletion shall be explained fully in writing.'' 5 U.S.C. 552(a).

In new § 2201.7, formerly § 2201.8, OSHRC revises this section to reflect changes in OSHRC's calculation of fees, and to add references to a new appendix containing OSHRC's revised fee schedule. OSHRC creates a new paragraph (a) out of former § 2201.8(a)(1) and also eliminates the specified dollar amount ($10) and changes it to ''the threshold amount as provided in OSHRC's schedule of fees.'' Further, OSHRC deletes paragraphs (a)(2) and (a)(3) because that information is now incorporated in § 2201.4(e). In addition, the procedural information in paragraph (a)(3) is duplicated in new § 2201.8(a) discussed below. In paragraph (b), OSHRC revises the copying, searching and reviewing fees so they are based on the direct costs of these services as provided in the FOIA under 5 U.S.C. 552(a)(4)(A)(iv). The FOIA provides that the Director of OMB shall promulgate guidelines for a uniform schedule of fees for all agencies under 5 U.S.C. 552(a)(4)(A)(i). OSHRC calculates its fees in accordance with OMB's ''Uniform Freedom of Information Act Fee Schedule and Guidelines,'' 52 FR 10012, Mar. 27, 1987. Under OMB's guidelines, these fees are to be based on the average hourly salary (base plus DC locality payment) of employees performing the services plus 16 percent for benefits. In addition, the fees for clerical employees are to be based on an average of all employees at the GS–9 level and below; the fees for professional employees are to be based on all employees at the GS–10 through GS–14 level; and the fees for managerial employees are to be based on an average of all employees at the GS–15 level and above. OSHRC's Office of Administration has calculated and updated the fees, which appear in the attached Appendix A. The FOIA Requester Service Center also will provide a hard copy of the schedule of fees upon request. OSHRC revises the language in paragraphs (b)(1), (b)(2) and (b)(3) of § 2201.7, formerly § 2201.8, to reflect the new calculation of fees and to reference OSHRC's schedule of fees in Appendix A.

OSHRC adds a new paragraph (c) in § 2201.7, formerly § 2201.8, which will require the FOIA Disclosure Officer to provide requesters an itemized invoice for fees related to FOIA requests. Although the FOIA does not require an itemized invoice, OSHRC will provide an itemized invoice for the convenience of the requester as part of OSHRC's effort to be citizen-centered pursuant to E.O. 13392. OSHRC also deletes paragraph (d) (Certification or authentication) and includes such certification or authentication services in a new paragraph (g) (Fees for services not required by the Freedom of Information Act), which is more inclusive of other services, such as express mail, that are not required by the FOIA.

In paragraph (e), OSHRC changes ''copying or search'' to ''the total fee'' to reflect the true cost of satisfying the request. OSHRC will continue to use the $25 total fee as the threshold above which the agency is required to contact the requester about cost. Although OSHRC contemplated raising the threshold amount and requested comments specifically on whether, and by how much, this threshold should be raised in its proposed regulations, no comments were received. Therefore, OSHRC has decided to continue using the $25 total fee as the threshold amount.

In paragraph (f) of § 2201.7, formerly § 2201.8, OSHRC modifies the third sentence to require full payment when a requester has previously failed to pay within 30 days. This revision is more consistent with the other sentences in the paragraph addressing advance payment. As noted above, OSHRC adds a new paragraph (g) on fees for services not required by the FOIA. This new paragraph is more inclusive of the types of services, such as express mail, that are not in OSHRC's current regulation. OSHRC also revises paragraphs (h) and (i) to reflect changes in OSHRC's procedures for transferring the bill collection responsibilities related to FOIA requests to OSHRC's Office of Administration. OSHRC believes that this change in bill collection procedures will improve efficiency because the FOIA Requester Service Center will not have to devote resources to bill collection and can focus on responding to FOIA requests. In addition, OSHRC revises paragraph (i) to reflect the Federal government's collection of debts under the Debt Collection Act of 1982 and its administrative procedures.

In paragraph (a) of § 2201.8, formerly § 2201.9, OSHRC includes some of the procedural language from paragraph (a)(3) of former § 2201.8.

As previously mentioned, OSHRC adds a new section, § 2201.9 (Appeal of denials), to consolidate all appeals in one section. This change is intended to make the FOIA rules more user-friendly. OSHRC also changes the time the requester may appeal a denial from 30 working days after the requester receives notice of the appeal to 20 working days. This change is based on a survey of various smaller agencies, including the Federal Mine Safety and Health Review Commission (20 working days). OSHRC also adds appeals of denial of fee waivers in this section because OSHRC's old rule did not specifically provide for appeals of denial of fee waivers.

Finally, as discussed in the section-by-section analysis of § 2201.7 above, OSHRC adds a new appendix with a schedule of fees it will charge for searching, reviewing and duplicating documents in response to a FOIA request.

III. Analysis of Comments Received

As noted above, OSHRC received no comments to the proposed rules.

Executive Order 12866

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Executive Order 13132

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act, 5 U.S.C. 606(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has certified to the Chief Counsel for Advocacy of the Small Business Administration, that these rules will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission makes a large amount of information available to the public, including small entities, on its Web site pursuant to the FOIA and other public disclosure requirements. In this regard, the Commission has available on its Web site copies of the Commission's procedural rules, final Commission decisions since 1972, final administrative law judges' decisions since 1993, strategic plans, performance reports, budget reports, as well as other information that may be of interest to the public. Small entities, like any other

individual or entity, may request under the FOIA other information from the Commission's files that has not been generally made available to the public. The FOIA establishes a fee structure to cover the direct costs of the government in searching for, reviewing, and duplicating requested records. The Commission's final rule is fully consistent with these requirements.

Unfunded Mandates Reform Act of 1995

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Congressional Review Act

Consistent with the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act), 5 U.S.C. 804 *et. seq.,* the Commission will submit to Congress and to the Comptroller General of the United States, a report regarding the issues of this Final Rule prior to the effective date set forth at the outset of this document. This rule is not a major rule under the Congressional Review Act. The rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 2201

Freedom of Information.

Signed at Washington, DC on September 22, 2006.

W. Scott Railton,

Chairman.

■ For the reasons set forth in the preamble, the Commission revises Chapter XX, Part 2201 of Title 29, Code of Federal Regulations, as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.
2201.1 Purpose and scope.
2201.2 Description of agency.
2201.3 Delegation of authority and responsibilities.
2201.4 General policy and definitions.
2201.5 Procedure for requesting records.
2201.6 Responses to requests.
2201.7 Fees for copying, searching, and review.
2201.8 Waiver of fees.
2201.9 Appeal of denials.
2201.10 Maintenance of statistics.
Appendix A to Part 2201—Schedule of Fees

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

§ 2201.1 Purpose and scope.

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission (OSHRC or Commission) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

§ 2201.2 Description of agency.

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2201.3 Delegation of authority and responsibilities.

(a) The Chairman delegates to the Chief FOIA Officer the authority to act upon all requests for agency records.

(b) The Chief FOIA Officer shall designate the FOIA Disclosure Officer(s), who shall be responsible for processing FOIA requests.

(c) The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response.

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address and telephone number of the FOIA Requester Service Center is 1120 20th Street, NW., Room 941, Washington, DC 20036–3457, (202) 606–5700.

§ 2201.4 General policy and definitions.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 552(b) or published in the **Federal Register** under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.5(a). Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Commission in any format, including electronic format. In response to FOIA requests, the Commission will search for records manually or by automated means, except when an automated search would significantly interfere with the operation of the Commission's automated information system.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the FOIA Disclosure Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Record availability at the OSHRC on-site FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying at the OSHRC on-site FOIA Reading Room, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3457. These records include:

(1) Final decisions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases;

(2) OSHRC Rules of Procedure and Guides to those procedures;

(3) Specific agency policy statements adopted by OSHRC and not published in the **Federal Register**;

(4) Administrative staff manuals that affect a member of the public;

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records; and

(6) A general index of records referred to under paragraph (c)(5) of this section.

(d) *Record availability at the OSHRC e-FOIA Reading Room.* Materials created on or after November 1, 1996 under paragraphs (c)(1), (2), (3), (4), (5) and (6) of this section may also be accessed electronically through the Commission's Web site at *http://www.oshrc.gov.*

(e) *Definitions.* For purposes of this part:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Disclosure Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Disclosure Officer has reasonable cause to doubt a requester's stated use, the FOIA Disclosure Officer shall provide the requester a reasonable opportunity to submit further clarification.

Direct costs means those expenses that the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The FOIA Disclosure Officer shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

Noncommercial scientific institution means an institution that is not operated on a ''commercial'' basis, as that term is defined in this paragraph, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

Representative of the news media, or news media requester is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For purposes of this definition, the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the FOIA Disclosure Officer shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Disclosure Officer shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, the FOIA Disclosure Officer shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

Working day means a regular Federal working day. It does not include Saturdays, Sundays, or Federal legal public holidays.

§ 2201.5 Procedure for requesting records.

(a) *Requests for information.* All requests for information must be made in writing and must be mailed or delivered to the FOIA Disclosure Officer at the address in § 2201.3(d). The words ''Freedom of Information Act Request'' must be printed on the face of the request's envelope or covering as well as the request itself. Requests for information must describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Date of receipt.* A request that complies with paragraph (a) of this section is deemed received on the actual date it is received by the Commission. A request that does not comply with paragraph (a) of this section is deemed received when it is actually received by the FOIA Disclosure Officer. For requests that are expected to result in fees exceeding $250, the request shall not be deemed to have been received until the requester is advised of the anticipated costs and the Commission has received full payment or satisfactory assurance of full payment as provided under § 2201.7(f).

§ 2201.6 Responses to requests.

(a) *Responses within 20 working days.* The FOIA Disclosure Officer will either grant or deny a request for records within 20 working days after receiving the request.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The FOIA Disclosure Officer shall notify the requester in writing of the extension, the reasons for the extension and the date on which a determination is expected. ''Unusual circumstances'' exists, but only to the extent reasonably necessary to the proper processing of the

particular request, when there is a need to:

(1) Search for and collect the requested records from one of OSHRC's regional offices or off-site storage facilities;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request.

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that a request cannot be completed within the allowable time (20 working days plus a 10 working day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two-track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving ''unusual circumstances'' that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless otherwise notified by the Commission, that their request is in the first track. The Commission will notify requesters when their request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified in writing. In the case of a request expected to take more than 30 working days for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term *compelling need* means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Commission as a matter of agency discretion.

(3) The FOIA Disclosure Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether processing will be expedited.

(f) *Content of denial.* When the FOIA Disclosure Officer denies a request for records, either in whole or in part, a request for expedited processing, and/or a request for fee waivers (see § 2201.8), the written notice of the denial shall state the reason for denial, give a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), set forth the name and title or position of the person responsible for the denial of the request, and notify the requester of the right to appeal the determination as specified in § 2201.9. A refusal by the FOIA Disclosure Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.7(f) may be treated as a denial of the request and appealed under § 2201.9.

(g) *Deletions.* The FOIA Disclosure Officer shall provide to the requester in writing a justification for deletions within records. The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the place in the record where the deletion is made shall be marked.

§ 2201.7 Fees for copying, searching, and review.

(a) *Fees required unless waived.* The FOIA Disclosure Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than the threshold amount as provided in OSHRC's fee schedule, in which case no fees shall be charged. See Appendix A. The FOIA Disclosure Officer shall, however, waive the fees in the circumstances stated in § 2201.8.

(b) *Calculation of fees.* Fees for copying, searching and reviewing will be based on the direct costs of these services, including the average hourly salary (base plus DC locality payment), plus 16 percent for benefits, of the following three categories of employees involved in responding to FOIA requests: clerical—based on an average of all employees at GS–9 and below; professional—based on an average of all employees at GS–10 through GS–14; and managerial—based on an average of all employees at GS–15 and above. OSHRC will calculate a schedule of fees based on these direct costs. The schedule of fees under this section appears in Appendix A to this part 2201. A copy of the schedule of fees may also be obtained at no charge from the FOIA Disclosure Officer. See § 2201.3(d).

(1) *Copying fee.* The fee per copy of each page shall be calculated in accordance with the per-page amount established in OSHRC's fee schedule. See Appendix A. For other forms of duplication, direct costs of producing the copy, including operator time, shall be calculated and assessed. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use.

(2) *Search fee.* Search fees shall be calculated in accordance with the amounts established in OSHRC's fee schedule. See Appendix A. Commercial requesters shall be charged for all search time. Search fees shall be charged even if the responsive documents are not located or if they are located but withheld on the basis of an exemption. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific

institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. Review fees shall be calculated in accordance with the amounts established in OSHRC's schedule of fees. See Appendix A. A review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions. However, a review fee shall not be charged for review by the Chairman under § 2201.9 (Appeal of denials).

(c) *Invoices.* The FOIA Disclosure Officer shall provide the requester with an invoice containing an itemization of assessed fees.

(d) *Aggregation of requests.* When the FOIA Disclosure Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the FOIA Disclosure Officer may aggregate any such requests and charge accordingly.

(e) *Fees likely to exceed $25.* If the total fee charges are likely to exceed $25, the FOIA Disclosure Officer shall notify the requester of the estimated amount of the charges. The notification shall offer the requester an opportunity to confer with the FOIA Disclosure Officer to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed $250, the FOIA Disclosure Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the FOIA Disclosure Officer shall require the requester to pay the full amount owed plus any interest owed as provided in paragraph (h) of this section or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the FOIA Disclosure Officer begins to process the new request or a pending request from that requester.

(g) *Fees for services not required by the Freedom of Information Act.* The Commission has discretion regarding its response to requests for services not required by the FOIA. For example, the FOIA does not require agencies to certify or authenticate responsive documents, nor does it require responsive documents to be sent by express mail. If these services are requested, the FOIA Disclosure Officer shall assess the direct costs of such services.

(h) *Interest on unpaid bills.* The Commission's Office of Administration shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. Interest will accrue from the date of billing until the Commission receives full payment. Interest will be at the rate described in 31 U.S.C. 3717.

(i) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Commission's Office of Administration may resort to the debt collection procedures set out in the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

§ 2201.8 Waiver of fees.

(a) *General.* The FOIA Disclosure Officer shall waive part or all of the fees assessed under § 2201.7(b) if two conditions are satisfied: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. Where the FOIA Disclosure Officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the FOIA Disclosure Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes. The FOIA Disclosure Officer shall afford the requester the opportunity to show that the requester comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the FOIA Disclosure Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the ''public interest'' requirement in paragraph (a) of this section.

§ 2201.9 Appeal of denials.

A denial of a request for records, either in whole or in part, a request for expedited processing, or a request for fee waivers, may be appealed in writing to the Chairman of the Commission within 20 working days of the date of the letter denying an initial request. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, the Chairman shall notify the requesting person that the requester may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)–(G).

§ 2201.10 Maintenance of statistics.

(a) The FOIA Disclosure Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5

U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year and the median number of days that these requests had been pending before the agency as of that date;

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The FOIA Disclosure Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the OSHRC FOIA Reading Room, and a copy will be accessible through OSHRC's Web site at *http://www.oshrc.gov.*

Appendix A to Part 2201—Schedule of Fees

Type of fee	Amount of fee
Threshold Amount (Amount below which fees will not be assessed).	$10
Search and Review Hourly Fees:	
Clerical (GS–9 and below)	23
Professional (GS–10 through GS 14)	46
Managerial (GS–15 and above)	76
Duplication cost per page	0.25
Computer printout copying fee	0.40
Searches of computerized records	Actual cost to the Commission, but shall not exceed $300 per hour, including machine time and the cost of the operator and clerical personnel.
Certification Fee	$35 per authenticating affidavit or declaration. (Note: Search and review charges may be assessed in accordance with the rates listed above.)

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–06–044]

RIN 1625–AA08

Special Local Regulations, Strait Thunder Hydroplane Races, Port Angeles, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Strait Thunder Hydroplane Races held on the waters of Port Angeles Harbor, Port Angeles, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This temporary rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This temporary rule is effective from 9 a.m. on September 29 until 5 p.m. on October 1, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–044 and are available for inspection or copying at the U.S. Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6200.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive sufficient notice of the date change for this year's event. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this temporary rule would not become effective until after the date of the event. For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The hydroplane race poses several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in proximity to other vessels. Accordingly, a safety zone is needed in order to provide for the safety of spectators and participants during the event.

Discussion of Rule

This temporary rule will create two regulated areas, a race area and a spectator area. These regulated areas assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public

safety requires these regulations to provide for the safety of life on the navigable waters.

Regulatory Evaluation

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

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this rule encompasses an area near Port Angeles Harbor, not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the hydroplanes to race. This rule would be enforced from 9 a.m. to 5 p.m. Pacific Daylight Time each day on September 29, 30, and October 1, 2006. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Port Angeles Harbor during the time this regulation is enforced. The regulation will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this temporary rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are not factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, and ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record keeping requirements, Waterways.

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T13–032 to read as follows:

§ 100.T13–032 Special Local Regulations, Strait Thunder Hydroplane Races, Port Angeles, WA.

(a) *Regulated areas.* (1) The regulated area encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington: Point 1: 48° 07′ 24″ N, 123° 25′ 32″ W; Point 2: 48° 07′ 26″ N, 123° 24′ 35″ W; Point 3: 48° 07′ 12″ N, 123° 25′ 31″ W; Point 4: 48° 07′ 15″ N, 123° 24′ 34″ W. [Datum: NAD 1983].

(2) The spectator area encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington: Point 1: 48° 07′ 32″ N, 123° 25′ 33″ W; Point 2: 48° 07′ 29″ N, 123° 24′ 36″ W; Point 3: 48° 07′ 24″ N, 123° 25′ 32″ W, Point 4: 48° 07′ 26″ N, 123° 24′ 35″ W. [Datum: NAD 1983].

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Port Angeles. The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters described in paragraph (a) above during the periods this regulation is in effect. The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Coast Guard Auxiliary vessels. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies as well as Strait Thunder event craft.

(c) *Special Local Regulations.* From 9 a.m. until 5 p.m. on September 29, 30, and October 1, 2006, non-participant vessels are prohibited from entering the regulated area unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds which will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Patrol Commander.

(d) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the discretion of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: September 11, 2006.

Richard R. Houck,

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

[FR Doc. E6–15843 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU92

Subsistence Management Regulations for Public Lands in Alaska; Kenai Peninsula Subsistence Resource Region

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule; withdrawal.

SUMMARY: We, the Federal Subsistence Board, are withdrawing the direct final rule that would have amended the regulations governing subsistence use of fish and wildlife in Alaska by creating an additional subsistence resource region for the Kenai Peninsula. We predicate this withdrawal on the fact that we have received significant adverse comments, specifically relating to the lack of public input on this issue.

DATES: This withdrawal is effective September 27, 2006.

ADDRESSES: You may submit comments electronically to *Subsistence@fws.gov* or via the Federal E-Rulemaking Portal at *http://www.regulations.gov. See* **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing. You may also submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: For general subsistence management program questions, contact Pete Probasco at (907) 786–3888. For Forest Service questions, contact Steve Kessler, Regional Subsistence Program Leader, USDA—FS Alaska Region, at (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *.'' As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence

statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114).

Federal Subsistence Regional Advisory Councils

Pursuant to the Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for residents of the regions, who have personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Withdrawal of Direct Final Rule

The Kenai Peninsula has unique fish and wildlife management challenges due to intense use of the Peninsula's fish and wildlife by local and nonlocal residents and by nonresidents, and due to the recent Board actions to begin to provide a meaningful subsistence priority for fisheries in Federally managed fresh waters on the Kenai Peninsula. Kenai Peninsula lands primarily under Federal management include the Chugach National Forest and the Kenai National Wildlife Refuge.

We published a direct final rule on August 14, 2006 (71 FR 46400), that would have created a separate subsistence resource region for the Kenai Peninsula because we viewed this action as an uncontroversial administrative action by the Federal Subsistence Board. That direct final rule would have become effective September 29, 2006, unless we received significant adverse comments.

During a Southcentral Federal Subsistence Regional Advisory Council meeting held in Anchorage, Alaska on August 24, 2006, we heard significant adverse testimony regarding the creation of a new Kenai Peninsula Subsistence Resource Region. Additionally, the Southcentral Regional Council unanimously recommended against the formation of such a region without providing more opportunity for public input. Letters from the public also strongly opposed the formation of such a region without providing more opportunity for public input. Therefore, we are withdrawing the direct final rule and will hold hearings in the affected area to obtain additional public input before deciding whether to proceed with the formation of a new subsistence resource region. In addition, on the same date that we published the direct final rule, we published a proposed rule (71 FR 46427) to create an additional subsistence resource region for the Kenai Peninsula.

For the reasons stated above, the Federal Subsistence Board withdraws the direct final rule of August 14, 2006 (71 FR 46400).

Dated: September 19, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: September 19, 2006.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 06–8276 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1253 and 1280

[Docket NARA–06–0007]

RIN 3095–AB52

Changes in NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is further modifying the research room hours at its facilities in the Washington, DC, area to retain, on a monthly basis, Saturday and some evening hours. We are taking this action in response to the many comments received on the interim final rule on this subject published in July. As noted in the previous rulemaking, NARA is reducing the research room hours as one of several measures the agency must take in Fiscal Year 2007 to ensure that our expenditures are in line with our expected resources. This regulation will affect individuals who use our archival research rooms in the National Archives Building and National Archives at College Park facility.

DATES: *Effective Date:* This final rule is effective October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or Jennifer Davis Heaps at 301–837–1801 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA published an interim final rule with request for comments on July 25, 2006 (71 FR 42058). The interim rule specified changes to NARA research room hours at the National Archives Building in Washington, DC, and the National Archives at College Park, MD and a revision of the public hours for visiting the National Archives Experience and the Rotunda exhibits in the National Archives Building. We received more than 530 timely comments. In addition, approximately 70 individuals attended a public meeting on the rule on August 3, 2006, at which 24 individuals spoke. Virtually all of the responsive comments concerned the research room hours in our DC area facilities.

In this final rule, we are further amending the interim final rule to specify that the research room hours at the National Archives Building and the National Archives at College Park will include, one week a month, evening hours from 5 p.m. to 8:45 p.m. on Thursday and Friday and Saturday hours from 8:45 a.m. to 4:45 p.m. This rule and the other provisions of the interim final rule published at 71 FR 42058 will go into effect on October 2, 2006.

Summary of Public Comments Received

The total number of comments received included submissions made through *http://www.regulations.gov,* individual letters that were mailed or faxed (or both) to NARA, letters forwarded from Congressional offices, and two petitions. Comments received on or before 11:59 p.m. on September 8, 2006, and those postmarked on or before September 8, were considered timely. Because of the time constraints in revising the rule before October 2, 2006, we were not able to consider late comments.

Many comments expressed appreciation for the important role NARA plays in providing public access to records and offered suggestions for ways in which NARA might be able to retain some or all extended hours. We address the most frequently stated suggestions in the next sections of this

SUPPLEMENTARY INFORMATION. A number of comments stated a concern that eliminating evening and Saturday hours would severely restrict the ability of certain categories of researchers—especially students, individuals with full-time jobs, and non-local researchers with limited time and budget—to use the Archives at all. In evaluating the various suggested alternatives, we tried to consider the needs of all researchers, but particularly the needs of those who have limited ability to visit the research rooms during weekday hours.

Discussion of Adopted Comments

A number of commenters recommended offering evening and Saturday hours one week each month. Many commenters stated that they come to our DC area facilities to do research in short, concentrated visits of less than two weeks once or twice a year. Offering monthly extended hours on Thursday and Friday evening and Saturday would provide these users an additional 15 hours of research time during that week. This alternative would also provide some relief to users who cannot come during the weekday because it would give them a non-workday block of time each month to review original records. We have adopted this alternative in the final rule. We recognize that it does not address all of the researcher needs identified in the comments, but it provides the best available balance between researcher needs and NARA financial constraints. For Fiscal Year 2007 (October 1, 2006–September 30, 2007), we will hold the extended hours the third Thursday through Saturday of the month. This schedule avoids conflict with the Veterans Day holiday in November 2006 and other Federal holidays occurring during the first and fourth weeks of other months. The schedule of extended hours will be published at *http://www.archives.gov/research/* and also available in the research rooms.

Other Alternatives Proposed in the Comments

A number of comments argued that NARA should make no changes in the research room hours, making reductions in other areas, if necessary. As noted in the preamble above, the reduction in the research room hours is only one of many areas in which NARA is making adjustments to ensure that NARA can continue to fulfill its mission as the nation's recordkeeper effectively with the resources that will be available to us. We are also taking other measures that are less visible to the public, such as instituting a hiring freeze and a staff ''buyout'' earlier this fiscal year, additional energy conservation measures, and a significant reduction in the agency's FY 2007 travel budget. When we issued the interim final rule, we did so because we had determined that it is not practicable to achieve all of the savings we need without any reduction in research room hours. This situation has not changed.

Many commenters asked that NARA retain Saturday hours once or twice a month. In evaluating the various alternatives, we determined that monthly extended hours on two evenings and Saturday would be more cost effective and serve more categories of researchers than being open two Saturdays per month but no evenings.

A number of commenters recommended that we close the research rooms on one weekday and stay open on Saturdays. While Monday was the day most frequently suggested for closing, other days of the week were put forth too, including a rotating day schedule that would include Saturday. Commenters suggested that this alternative would assist those researchers who can only come on Saturdays; it might also assist some current evening researchers who are able to come on Saturday instead. While a number of institutions follow a Tuesday–Saturday schedule, a Tuesday–Saturday or other similar schedule would not provide an equivalent amount of savings as the interim rule proposal for a Monday–Friday schedule because the facilities would have to remain open on Mondays for other official business that NARA conducts. Thus, NARA would still incur facility and security costs for the buildings on Mondays. This alternative also reduces available hours for our large number of weekday researchers, including Federal agency researchers.

Another recommendation was to open late (e.g., 1 p.m.–9 p.m., noon–8 p.m., 11 a.m.–7 p.m., or 10 a.m.–6 p.m.) some or all weekdays. The commenters suggested that this alternative would provide some relief for researchers who can only come to the Archives in the evening. NARA's review of this alternative found that this would not provide significant relief, except to the relatively small number of researchers (approximately one to two percent) who only use the research rooms in the evening, and might reduce available hours for weekday researchers (over half of our current researchers) if they can not shift to later hours. The cost for this alternative would also be greater than a Monday–Friday schedule because of the need for facility and security services during official business hours and additional night-differential pay for staff working after 6 p.m.

Because the number of research visits to the larger research complex at the National Archives at College Park (Archives II) is nearly double the number of research visits at the National Archives Building, some commenters suggested implementing the Monday–Friday 9 a.m.–5 p.m. schedule at the National Archives Building and retaining the existing extended hours (Tuesday, Thursday, Friday evenings and Saturday every week) at Archives II. Not only is the cost of this alternative significantly more than other alternatives considered; the large number of genealogical researchers who do research at the National Archives Building would gain no relief.

Two other alternatives were suggested by several commenters: to use unpaid volunteers or interns or to charge a user fee to all or non-U.S. researchers. Neither alternative is viable. NARA has a large cadre of dedicated volunteers who greatly assist NARA in carrying out its mission. Volunteer opportunities are described on our Web site at *http://www.archives.gov/careers/volunteering/*. Volunteers, however, cannot replace NARA staff or security guards in providing oversight of our research rooms and use of original records. NARA does not have statutory authority to charge user fees for access to our research rooms.

Other Comments Relating to Research Room Hours

As part of many comments on the change in hours, concerns were expressed with NARA's schedule for ''pulling'' (*i.e.*, retrieving from the stacks) original records under the new hours and delays in entering the National Archives Building at the start of the research day because of security procedures. Currently, with the research room opening at 8:45 a.m., the first pull of the day, when researchers must submit their reference requests for original records, takes place at 9:30 a.m. Commenters were concerned that a 9 a.m. research room opening would not allow sufficient time to prepare the reference request before the first pull time. Beginning October 2, we are adjusting the pull times to 10 and 11 a.m., and 1:30 and 2:30 p.m. on the days that the research complex closes at 5 p.m.; an additional late day pull will be provided when we are open in the evening. Changing the morning pulls to 10 and 11 instead of 9:30 and 10:30 allows more time for researchers to submit their requests for the first pulls of the day. The current 3:30 pull time will be dropped because records pulled

at 3:30 are scheduled to arrive by 4:30, allowing only 15 minutes for review before records are returned before closing time. Our records retrieval practices will enable us to accommodate requests for records submitted at any time prior to the last pull time of the day.

Another concern was expressed with the availability of NARA staff for researcher consultation. Our experience with the Researcher Assistance Room in the National Archives Building has shown that the most efficient and researcher-friendly reference consultation is provided in one room. Having all finding aids and research assistance staff in one location enables us to focus our resources so we can provide better service to researchers and, at the same time, achieve efficiencies. Staff assigned to a single research consultation room provide excellent reference service because they have all finding aids available in the room and they have no other responsibility to distract them from helping researchers while they are assigned to the room. Researchers benefit significantly from having this focused service in one location. We will modify the Research Assistance Area in Room 2000 in the College Park facility so that we can provide the same efficient service that we provide in the National Archives Building.

Finally, at the public meeting, several commenters expressed concern that the security procedures for entering the National Archives Building were more cumbersome and required more time than our procedures at College Park, also affecting the amount of time researchers could spend in the research rooms. Immediately following the meeting, NARA instituted the same inspection procedures used at College Park in the National Archives Building.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications.

List of Subjects

36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, the interim rule published on July 25, 2006 (71 FR 42058) amending 36 CFR parts 1253 and 1280 is confirmed as final with the following changes:

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.1 by revising paragraph (a) to read as follows:

§ 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Research Center and the Central Research room are:

(1) 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays, and

(2) Once monthly, from 5 p.m. to 8:45 p.m. on Thursday and Friday and from 8:45 a.m. to 4:45 p.m. on Saturday. Information on these extended hours is available at *http://www.archives.gov/research/.*

(b) * * *

(c) * * *

■ 3. Amend § 1253.2 by revising paragraph (b) to read as follows:

§ 1253.2 National Archives at College Park.

* * * * *

(b) Research complex hours are:

(1) 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays, and

(2) Once monthly, from 5 p.m. to 8:45 p.m. on Thursday and Friday and from 8:45 a.m. to 4:45 p.m. on Saturday. Information on these extended hours is available at *http://www.archives.gov/research/.*

* * * * *

Dated: September 25, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 06–8338 Filed 9–25–06; 2:07 pm]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0087; FRL–8223–4]

RIN–2060–AM24

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Rule.

SUMMARY: This action lists four substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable subject to use conditions under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs and find them acceptable where they do not pose a greater overall risk to human health and the environment than other acceptable substitutes.

DATES: This rule is effective on November 27, 2006 without further notice, unless EPA receives adverse comment or receives a request for a public hearing by October 27, 2006. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect.

ADDRESSES: EPA has established a public docket for this action under Docket ID No. EPA–HQ–OAR–2005–0087. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9749; fax number: (202) 343–2363; e-mail address: *maranion.bella@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION: In this direct final rule, EPA adds four fire suppression agents to the list of acceptable substitutes subject to use conditions. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to Subpart G list for specific end uses substitutes for ODSs as unacceptable or acceptable with certain restrictions imposed on their use. The action in this direct final rule will add the four halon substitutes acceptable subject to use conditions to the appendices to Subpart G.

EPA is publishing today's revisions to the SNAP lists without prior proposal because the Agency views them as non-controversial and anticipates no adverse comment. We are adding four new agents to the list of acceptable substitutes subject to use conditions. This action does not place any significant burden on the regulated community but lists as acceptable, subject to use conditions, new halon substitutes while continuing to protect human health and the environment.

In the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a companion proposed rule that proposes the same actions as in this direct final rule. The direct final rule will be effective on November 27, 2006 without further notice unless we receive adverse comment (or a request for a public hearing) by October 27, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information (CBI), we request that you submit them directly to Bella Maranion at the address under **FOR FURTHER INFORMATION CONTACT** in two versions: one clearly marked ''Public'' to be filed in the Public Docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only. This information will remain confidential unless EPA determines, in accordance with 40 CFR part 2, subpart B, that the information is not subject to protection as CBI.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of Section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of Federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA issued a rule (69 FR 13044) which described the process for administering the SNAP program and published EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risk posed by various substitutes for ozone-depleting

compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under Section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as ''acceptable subject to use conditions''. Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of Section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for purposes of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP rule published in the **Federal Register** on March 18, 1994 (59 FR 13044), and see also the Code of Federal Regulations at 40 CFR Part 82, Subpart G. A complete chronology of SNAP decisions and the appropriate **Federal Register** citations may be found at EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/chron.html.* For a complete listing of the Agency's decisions on acceptable and unacceptable substitutes, go to *http://www.epa.gov/ozone/snap/lists/index.html.*

II. Listing Decisions: Fire Suppression and Explosion Protection—Total Flooding

In this final rule, EPA is issuing its decision on the acceptability of the following substitutes in the fire suppression and explosion protection sector: *Gelled Halocarbon/Dry Chemical Suspension with sodium bicarbonate additive (Envirogel with sodium bicarbonate additive), Powdered Aerosol D (Aero-K®, Stat-X®), Powdered Aerosol E (FirePro®), and Phosphorous Tribromide* (PBr_3).

The Agency evaluated the criteria set forth at 40 CFR 82.180(a)(7) in determining the acceptability of the above substitutes for halon 1301 total flooding fire suppression systems. The Agency has determined that the Clean Air Act does not authorize EPA to regulate for global climate change purposes (Fabricant, 2003). The Agency has not yet concluded how this determination would affect its consideration of the global warming potential of substitutes under the SNAP program. Regardless, for the substitutes considered here, the global warming potential of the alternatives was not a determinative factor in EPA's acceptability determination. The GWP for these substitutes is well below that of previously approved substitutes in this sector.

The section below presents a detailed discussion of the four fire suppression and explosion protection substitute listing determinations that are finalized in today's direct final rule. Tables summarizing these listing decisions are at the end of this document. The statements provided in the **FURTHER INFORMATION CONTACT** section of these tables provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the **FURTHER INFORMATION CONTACT** may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the **FURTHER INFORMATION CONTACT** column of the tables to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

A. Gelled Halocarbon/Dry Chemical Suspension With Sodium Bicarbonate Additive (Envirogel With Sodium Bicarbonate Additive)—Acceptable Subject to Use Conditions

Gelled Halocarbon/Dry Chemical Suspension with sodium bicarbonate additive (Envirogel with sodium bicarbonate additive) is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding uses in occupied areas. Envirogel (Gelled Halocarbon/Dry Chemical Suspension) is a blend of any of several hydrofluorocarbons (HFCs) with an additive. The HFCs used in the Envirogel agent (HFC–125, HFC–227ea, or HFC–236fa) have previously been approved as total flooding and streaming agents under EPA's SNAP program. The use condition requires that use of whichever HFC (HFC–125, HFC–227ea, or HFC–236fa) is employed in the Envirogel with sodium bicarbonate formulation must be in accordance with all requirements for acceptability (i.e., narrowed use limits) of that HFC under EPA's SNAP program. In addition, the use of HFCs employed in this agent should be in accordance with the latest version of the National Fire Protection Association (NFPA) 2001 Standard on Clean Agent Fire Extinguishing Systems. The use of aerosol extinguishing agents such as Envirogel with sodium bicarbonate should be in accordance with the latest version of NFPA 2010 Standard on Aerosol Extinguishing Systems.

EPA previously listed Envirogel with the ammonium polyphosphate additive as acceptable for use as a substitute for halon 1301 in total flooding applications in both occupied and unoccupied areas (67 FR 4195, January 29, 2002). In the same rule, use of Envirogel with any additive other than ammonium polyphosphate was restricted to normally unoccupied areas. We had no information on the toxicity of Envirogel in occupied areas with any

additive other than ammonium polyphosphate. Subsequently, the submitter requested SNAP review of Envirogel with sodium bicarbonate for use in occupied areas. We evaluated this agent for use in occupied areas and have determined that it is acceptable for such use, subject to use conditions.

EPA is providing additional information regarding use of Envirogel with sodium bicarbonate additive. These are as follows and further discussed below:

(1) Sodium bicarbonate release in all settings should be targeted so that increased pH level would not adversely affect exposed individuals.

(2) Users should provide special training to individuals required to be in environments protected by Envirogel with sodium bicarbonate additive extinguishing systems.

(3) Each extinguisher should be clearly labeled with the potential hazards from use and safe handling procedures.

Targeting Release of Sodium Bicarbonate to Prevent Increased Blood pH

The addition of sodium bicarbonate in the mixture is to minimize the formation of toxic hydrofluoric acid (HF) formed by the decomposition of HFCs during a fire. Sodium bicarbonate, while low in toxicity, also has the ability to affect blood pH level; therefore, its release in all settings should be targeted so that increased blood pH level would not adversely affect those exposed. Sample calculations and assumptions for respirable and released sodium bicarbonate for varied enclosure sizes are included in the risk screen conducted for this substitute and are available in the electronic docket number EPA–HQ–OAR–2005–0087 for this rule. The effects from exposure to Envirogel with sodium bicarbonate additive are expected to be negligible at the charge sizes and concentrations provided by the manufacturer. This is because of the body's compensatory mechanisms that restore the pH to normal range. EPA recommends the following:

—Avoid or minimize exposure to this fire suppressant in a room with an internal volume of 300 ft^3.
—Give exposed individuals an electrolyte solution to drink afterwards to restore the pH within the appropriate range.
—To reduce occupational exposure to sodium bicarbonate during the manufacturing or filling of extinguishers, workers should handle the sodium bicarbonate in a hood and follow good manufacturing practices if there is a risk of dispersing the dust.
—To protect the skin and eyes, workers should wear safety goggles and gloves.
—In the case of an accidental spill, the area should be well-ventilated, and workers should wear their protective equipment while wet-vacuuming the sodium bicarbonate.

Training and Labeling

To protect personnel who may be present in areas where Envirogel with sodium bicarbonate additive is discharged, EPA recommends that users should provide special training, including the hazards associated with use of the HFC agent and sodium bicarbonate and proper handling procedures, for individuals required to be in spaces protected by these systems. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of the specified HFC agent and sodium bicarbonate, as well as handling procedures to reduce risk resulting from these hazards.

Additional Information

EPA is providing additional information regarding use of Envirogel with sodium bicarbonate additive. Use of Envirogel with sodium bicarbonate additive should conform to relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR 1910, Subpart L, sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event that personnel reenter the area. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

Updated Tables of Acceptability Listings

Under the SNAP program, Envirogel with the additive ammonium polyphosphate is listed as an acceptable substitute as a total flooding agent. *See* 67 FR 4185, 4195–96. Prior to this rule becoming final, Envirogel with any additive other than ammonium polyphosphate was listed in Appendix J to part 82, subpart G as acceptable subject to narrowed use limits with the condition that it only be used in normally unoccupied areas. *Id.* Because EPA is finding Envirogel with the additive sodium bicarbonate acceptable subject to narrowed use conditions in normally occupied spaces, we are removing the listing of Envirogel from existing Appendix J and we are addressing its use in new Appendices O and P. Appendix O addresses the decision in this rule that Envirogel with the additive sodium bicarbonate is acceptable subject to use conditions in both normally unoccupied and occupied areas. Appendix P reflects EPA's prior decision that Envirogel with an additive other than ammonium polyphosphate is acceptable for use only in normally unoccupied areas but modifies it to reflect the decision in this rule that Envirogel with the additive sodium bicarbonate may also now be used in occupied areas. Today's action does not modify EPA's prior decision that Envirogel with the additive ammonium polyphosphate is acceptable for use as a total flooding agent. The removal of Envirogel from Appendix J leaves the agent Halotron II, under the generic name HFC Blend B, as the only agent in Appendix J that is acceptable subject to narrowed use limits.

Use of Envirogel with sodium bicarbonate additive in occupied spaces will be less harmful to the atmosphere than the continued use of halon 1301. Additionally, the risk to the general population is expected to be below levels of concern. Thus, we find that Envirogel with sodium bicarbonate additive is acceptable subject to use conditions because in the end uses listed, it does not pose a greater overall risk to human health and the environment than other acceptable alternatives.

B. Powdered Aerosol D (Aero-K®, Stat-X®)—Acceptable Subject to Use Conditions

Powdered Aerosol D (Aero-K®, Stat-X®) is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding uses. As requested by the submitter, the use conditions require that Powdered Aerosol D be used only in areas that are not normally occupied. In the ''Further Information'' column of the tables summarizing today's listing decisions and found at the end of this document, we also provide that use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 Standard for Aerosol Extinguishing Systems.

Powdered Aerosol D is a pyrotechnic particulate aerosol and explosion suppressant that is supplied to users as a solid housed in a double-walled hermetically-sealed steel container. When the unit is triggered by heat (300 °C), the product is pyrotechnically activated to produce gases and aerosol particles from a mixture of chemicals. This pyrotechnic composition passes through a bed of catalytically active

substrate that cools, oxidizes, and filters the particulates of the mixture.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that Powdered Aerosol D does not pose greater overall risk to human health and the environment than other acceptable substitutes. According to the submitter, the active ingredients for this technology are solids both before and after use; thus, the ozone depletion potential (ODP) and the atmospheric lifetime (ALT) are both zero. The concentrations of the gaseous post-activation products are not expected to result in significant adverse atmospheric impacts. Thus, we find that Powdered Aerosol D is acceptable, subject to use conditions, because it does not pose a greater overall risk to human health and the environment in the end use listed compared to other acceptable substitutes as long as the use conditions are observed. EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking.

EPA is providing additional information regarding use of Powdered Aerosol D for total flooding uses in unoccupied spaces. EPA evaluated occupational exposure, exposure at end use, and general population exposure to ensure that the use of Powdered Aerosol D did not pose unacceptable risks to workers or the general public. In the **FURTHER INFORMATION CONTACT** column of the tables summarizing today's listing decisions, EPA recommends the following for establishments manufacturing Powdered Aerosol D and filling containers to be used in total flooding applications:

—Workers should wear safety goggles or shields and appropriate protective equipment (e.g., chemical suits, gloves, masks, particulate respirators using NIOSH type N95 or better filters).
—A local exhaust system should be installed and operated to provide adequate ventilation to reduce airborne exposure of Powdered Aerosol D constituents.
—An eye wash fountain and quick drench facility should be close to the production area;
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent.
—Workers should adhere to appropriate occupational safety guidelines.

Upon activation of the Powdered Aerosol D system, several post-activation products are expected to form. Workers entering the protected space after activation should wear the appropriate protective equipment (e.g., gloves, goggles, and a respirator with fine dust rating/capability). Workers responsible for clean up of an inadvertent release of Powdered Aerosol D should wear chemical suits and self-contained breathing apparatus during the cleanup and should not come into contact with post-discharge solids. The manufacturer should provide guidance upon installation of the system regarding the appropriate timeframe after which workers may re-enter the area for disposal to allow the maximum settling of all the particulates. The contents removed from the space should be disposed of according to good industrial hygiene practices, and equipment should be thoroughly decontaminated after use.

EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking. We find that Powdered Aerosol D is acceptable subject to use conditions (for use only in normally unoccupied areas) because it does not pose a greater overall risk to public health and the environment than other acceptable substitutes in the end use and application listed above.

C. Powdered Aerosol E (FirePro®)—Acceptable Subject to Use Conditions

Powdered Aerosol E (FirePro®) is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding agent uses. As requested by the submitter, the use conditions require that Powdered Aerosol E be used only in normally unoccupied areas. In the **FURTHER INFORMATION CONTACT** column of the tables summarizing today's listing decisions and found at the end of this document, we also provide that use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 Standard for Aerosol Extinguishing Systems.

Powdered Aerosol E is generated in an automated manufacturing process during which the chemicals, in powder form, are mixed and then supplied to end users as a solid contained within a fire extinguisher. In the presence of heat, the solid converts to an aerosol consisting mainly of potassium salts.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that Powdered Aerosol E does not pose a greater overall risk to human health or the environment than other acceptable substitutes. According to the submitter, the active ingredients for this technology are solids both before and after use; thus, the ODP and the ALT are both zero. The concentrations of the gaseous post-activation products are not expected to result in significant adverse atmospheric impacts. Thus, we find that FirePro® is acceptable, subject to use conditions, because it does not pose a greater overall risk to human health and the environment in the end use listed compared to other acceptable substitutes. EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking.

EPA is providing additional information regarding use of Powdered Aerosol E for total flooding uses in unoccupied spaces. EPA evaluated occupational exposure, exposure at end use, and general population exposure to ensure that the use of Powdered Aerosol E did not pose unacceptable risks to workers or the general public. In the **FURTHER INFORMATION CONTACT** columns of the tables summarizing today's listing decisions, EPA recommends the following for establishments manufacturing FirePro® and filling containers to be used in total flooding applications:

—The mixing room should be equipped with a ventilation system.
—Workers should wear gloves and breathing apparatus.
—Appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the manufacture, clean up, and disposal of this product.
—Appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn or on site during the installation and maintenance of the product.
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent.

Workers should adhere to appropriate occupational safety guidelines. Upon activation of the FirePro® system, the levels of respirable dust will range from 13.7 to 32.9 g/m^3. Therefore, if accidentally activated in the presence of workers, the level of respirable particles in the air will exceed OSHA's limit of 5 mg/m^3 of respirable particles and will therefore be considered a nuisance dust. In addition, bromine and chlorine could be present at levels above the Short Term Exposure Limits (STEL) designated by the American Conference of Government Industrial Hygienists (ACGIH). Because the respirable dust level will be exceeded and the STEL of chlorine and bromine could be

exceeded, Powdered Aerosol E is limited to use in normally unoccupied spaces. Because installation and maintenance personnel could be exposed when the system is activated, EPA recommends that all personnel wear goggles, gloves, and particulate removing respirators while performing installations and/or maintenance activities.

The manufacturer should provide guidance upon installation of the system regarding the appropriate timeframe after which workers may re-enter the area for disposal to allow the maximum settling of all the particulates. Clean-up operations are likely to result in re-circulation of potentially toxic nuisance dust particles. Workers entering the protected space after activation should wear the appropriate protective equipment (*e.g.*, gloves, goggles, and a respirator with fine dust rating/capability). Workers responsible for clean up of an inadvertent release of Powdered Aerosol E should wear rubber gloves, goggles, and a particulate removing respirator. The contents removed from the space should be disposed of according to good industrial hygiene practices, and equipment should be thoroughly decontaminated after use.

EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking. We find that Powdered Aerosol E is acceptable subject to use conditions (for use only in normally unoccupied areas) because it does not pose a greater overall risk to human health and the environment than other acceptable substitutes in the end use and application listed above.

D. Phosphorous Tribromide (PBr_3)—Acceptable Subject to Use Conditions

Phosphorous tribromide (PBr_3) is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding uses. As requested by the submitter, the use conditions require that PBr_3 be used only in aircraft engine nacelles. These areas are unoccupiable, meaning that personnel cannot enter the space due to the physical or dimensional constraints of the protected space. PBr_3 is estimated to have negligibly small ODP and an ALT estimated to be less than a few seconds. The use of PBr_3 proposed for use as a total flooding fire suppression agent to protect aircraft engine nacelles is not expected to pose a threat to atmospheric integrity or to human health. Today, EPA is listing PBr_3 as acceptable, subject to use conditions, for use as a substitute for halon 1301 for total flooding only in aircraft engine nacelles.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that PBr_3 does not pose a greater overall risk to human health and the environment than other acceptable substitutes. Because the fire suppressant is proposed for use in aircraft engine nacelles, EPA reviewed the potential contribution to ozone depletion from its discharge into the stratosphere. Given the short atmospheric lifetime of PBr_3 because of rapid hydrolysis and the small amount of bromine used in this application, the ODP is expected to be negligibly small (approximately 0.01–0.08, as compared to the ODP of halon 1301 of 12). Therefore, PBr_3 is substantially less harmful to the ozone layer than the continued use of halon 1301. EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking.

EPA is providing additional information regarding use of PBr_3 for total flooding uses in aircraft engine nacelles considered to be unoccupiable spaces. EPA evaluated occupational exposure, exposure at end use, and general population exposure to ensure that the use of PBr_3 did not pose unacceptable risks to workers or the general public. According to the submitter, workers are not expected to have contact with PBr_3 in the manufacturing setting; however, there is the potential risk of exposure in the event of an accidental spill during manufacturing. EPA modelled a simulated spill in a room assuming the instantaneous and complete hydrolysis of PBr_3 to gaseous HBr and solid H_3PO_3. The HBr concentrations resulting from a spill during manufacturing are not considered an immediate, significant risk to workers' health. A spill in the room modelled would potentially produce enough solid H_3PO_3 to exceed the ACGIH limit for nuisance dust of 10 mg/m^3. However, because the nuisance dust limit is based on an 8-hour time-weighted average for continuing, long-term exposure, and the spill would be an isolated event, the small exceedance is not considered to be of health concern. Since the space considered for use of the agent is an aircraft engine nacelle, which is an unoccupiable space, no end use exposure will result from the use of PBr_3 in this space.

In the **FURTHER INFORMATION CONTACT** column of the tables summarizing today's listing decisions, EPA recommends the following for establishments manufacturing, installing, or maintaining the PBr_3 ampoules for aircraft engine nacelles:

—Adequate ventilation should be in place and/or positive pressure self-contained breathing apparatus (SCBA) should be worn.
—All spills should be cleaned up immediately in accordance with good industrial hygiene practices.
—Training for safe handling procedures should be provided to all personnel that would be likely to handle PBr_3 containers or extinguishing units filled with the material.

EPA's review of environmental and human health impacts of this agent is contained in the public docket for this rulemaking. We find that PBr_3 is acceptable subject to use conditions (for use only in aircraft engine nacelles) because it does not pose a greater overall risk to human health and the environment than other acceptable substitutes in the end use and application listed above.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on August 23, 2004, that it considers this a ''non-significant regulatory action'' within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork

Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the OMB. OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350. The EPA ICR Numbers are 1596.06 and 1774.03.

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. Include the ICR and/or OMB number in any correspondence.

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. This 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.

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 are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities beyond current industry practices. Today's action effectively supports the introduction of four new alternatives to the fire protection extinguishing systems market thus providing additional options for users making the transition away from ozone-depleting halons.

Use of halon 1301 total flooding systems have historically been in specialty fire protection applications including essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. Thus, EPA is providing more options to any entity, including small entities, by finding these substitutes acceptable for use. The use restrictions imposed on the substitutes in today's rule are consistent with the applications suggested by the submitters. Thus far, these alternatives have not been sold or used in the end uses not found acceptable under today's rule. Until a manufacturer or other party requests a SNAP review for such end uses, these products may not be sold for such end uses. Therefore, we conclude that the rule does not impose a new cost on businesses.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and

timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not economically significant as defined in Executive Order 12866, and the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this final rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry related to choices of alternative fire suppression systems to support the transition away from ozone-depleting substances, but little if any impact related to energy. Thus, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the latest edition of NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems which provides for exposure guidelines and safe use of halocarbon and inert gas agents used to extinguish fires. EPA also refers to the latest edition of NFPA 2010 Standard on Aerosol Extinguishing Systems which provides for safe use of aerosol extinguishing agents and technologies. Copies of these standards may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555. The NFPA 2001 and 2010 standards meet the objectives of the rule by setting scientifically-based guidelines for safe exposure to halocarbon and inert gas agents and aerosol extinguishing agents,

respectively. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 27, 2006, unless we receive adverse comment or a request for a public hearing prior to October 27, 2006.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 21, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671—7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Appendix J to Subpart G of part 82 is amended by revising the table entitled ''Fire Suppression and Explosion Protection—Total Flooding Substitutes—Acceptable Subject to Narrowed Use Limits'' to read as follows:

Appendix J to Subpart G of Part 82—Substitutes listed in the January 29, 2002 Final Rule, effective April 1, 2002.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTION—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Further information
Total flooding	HFC Blend B (Halotron II®).	Acceptable subject to narrowed use limits.	Acceptable in areas that are not normally occupied only.	See additional comments 1, 2, 3, 4, 5.

Additional comments:
1—Should conform to relevant OSHA requirements, including 29 CFR 1910, subpart L, Sections 1910.160 and 1910.162.
2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

■ 3. Subpart G of part 82 is amended by adding Appendix O to read as follows:

Appendix O to Subpart G of Part 82—Substitutes listed in the September 27, 2006 Final Rule, effective November 27, 2006

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Conditions	Further information
Total flooding	Gelled Halocarbon/Dry Chemical Suspension (Envirogel) with sodium bicarbonate additive.	Acceptable subject to use conditions.	Use of whichever hydrofluorocarbon gas (HFC–125, HFC–227ea, or HFC–236fa) is employed in the formulation must be in accordance with all requirements for acceptability (i.e., narrowed use limits) of that HFC under EPA's SNAP program.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems, for whichever hydrofluorocarbon gas is employed, and the latest edition of the NFPA 2010 standard for Aerosol Extinguishing Systems. Sodium bicarbonate release in all settings should be targeted so that increased blood pH level would not adversely affect exposed individuals. Users should provide special training, including the potential hazards associated with the use of the HFC agent and sodium bicarbonate, to individuals required to be in environments protected by Envirogel with sodium bicarbonate additive extinguishing systems. Each extinguisher should be clearly labeled with the potential hazards from use and safe handling procedures. See additional comments 1, 2, 3, 4, 5

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Conditions	Further information
Total flooding	Powdered Aerosol D (Aero-K®, Stat-X®).	Acceptable subject to use conditions.	For use only in normally unoccupied areas.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 standard for Aerosol Extinguishing Systems. For establishments manufacturing the agent or filling, installing, or servicing containers or systems to be used in total flooding applications, EPA recommends the following: —Adequate ventilation should be in place to reduce airborne exposure to constituents of agent; —An eye wash fountain and quick drench facility should be close to the production area; —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent; —Workers responsible for clean up should allow for maximum settling of all particulates before reentering area and wear appropriate protective equipment; and —All spills should be cleaned up immediately in accordance with good industrial hygiene practices. See additional comments 1, 2, 3, 4, 5.
Total flooding	Powdered Aerosol E (FirePro®).	Acceptable subject to use conditions.	For use only in normally unoccupied areas.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 standard for Aerosol Extinguishing Systems. For establishments manufacturing the agent or filling, installing, or servicing containers or systems to be used in total flooding applications, EPA recommends the following: —Adequate ventilation should be in place to reduce airborne exposure to constituents of agent; —An eye wash fountain and quick drench facility should be close to the production area; —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent; —Workers responsible for clean up should allow for maximum settling of all particulates before reentering area and wear appropriate protective equipment; and —All spills should be cleaned up immediately in accordance with good industrial hygiene practices. See additional comments 1, 2, 3, 4, 5.
Total flooding	Phosphorous Tribromide (PBr_3).	Acceptable subject to use conditions.	For use only in aircraft engine nacelles.	For establishments manufacturing the agent or filling, installing, or servicing containers or systems, EPA recommends the following: —Adequate ventilation should be in place and/or positive pressure, self-contained breathing apparatus (SCBA) should be worn; —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent; and —All spills should be cleaned up immediately in accordance with good industrial hygiene practices. See additional comments 1, 2, 3, 4, 5.

Additional comments:

1—Should conform to relevant OSHA requirements, including 29 CFR 1910, subpart L, Sections 1910.160 and 1910.162.

2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

■ 4. Subpart G of part 82 is amended by adding Appendix P to read as follows:

Appendix P to subpart G of part 82-Substitutes listed in the September 27, 2006 Final Rule, effective November 27, 2006

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Further information
Total flooding	Gelled Halocarbon/Dry Chemical Suspension with any agent other than ammonium polyphosphate or sodium bicarbonate additive (Envirogel with sodium bicarbonate additive).	Acceptable subject to narrowed use limits.	For use only in normally unoccupied areas.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems, for whichever hydrofluorocarbon gas is employed. Envirogel is listed as a streaming substitute under the generic name Gelled Halocarbon/Dry Chemical Suspension. Envirogel was also previously listed as a total flooding substitute under the same generic name. EPA has found Envirogel with the ammonium polyphosphate additive and Envirogel with the sodium bicarbonate additive to be acceptable as total flooding agents in both occupied and unoccupied areas. See additional comments 1, 2, 3, 4, 5

Additional comments:
1—Should conform to relevant OSHA requirements, including 29 CFR 1910, subpart L, Sections 1910.160 and 1910.162.
2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

[FR Doc. E6–15831 Filed 9–26–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0645; FRL–8092–6]

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on alfalfa, forage; alfalfa, hay; alfalfa, seed; apple, wet pomace; fruit, pome, group 11; fruit, stone, group 12; juneberry; leek; onion, green; onion, welsh; pomegranate; shallot; strawberry; vegetable, fruiting, group 8; wheat, grain; wheat, forage; wheat, hay; and wheat, straw. BASF Corporation and Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0645. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305 5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0645 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0645 by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 14, 2006 (71 FR 34341–34342) (FRL–8072–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 0E6175 (vegetable, fruiting, group 8), PP 2E6450 (fruit, pome, group 11; apple, wet pomace; and juneberry), PP 2E6464 (fruit, stone, group 12), PP 2E6449 (pomegranates), by Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, New Brunswick, NJ 08902–390.

In the **Federal Register** of June 14, 2006 (71 FR 34344–34345) (FRL–8072–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 5E6927 (onion, green; onion, welsh; leek; and shallot), PP 5E6928 (strawberry), by Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, New Brunswick, NJ 08902–390.

In the **Federal Register** of August 18, 2006 (71 FR 47810–47811 (FRL–8084–71), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 4F6870 (wheat, grain; wheat, forage; wheat, hay; and wheat, straw), and PP 5F6961 (alfalfa, forage; alfalfa, hay; and alfalfa, seed) by BASF Corporation Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528.

These petitions requested that 40 CFR 180.361 be amended by establishing a tolerance for combined residues of the herbicide pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on vegetables, fruiting, group 8 at 0.10 ppm (PP 0E6175), fruit, pome, group 11 at 0.10 ppm; apple, wet pomace at 0.20 ppm; and juneberry at 0.10 ppm (PP 2E6450), fruit, stone, group 12 at 0.10 ppm (PP 2E6464), pomergranate at 0.10 ppm (PP 2E6449), onion, green at 0.20 ppm; onion, welsh at 0.20 ppm, leek at 0.20 ppm; and shallot at 0.2 ppm (PP 5E6927), strawberry at 0.10 ppm (PP 5E6928), wheat, grain at 0.10 ppm; wheat, forge at 3.0 ppm; wheat, hay at 0.60 ppm; and wheat, straw at 0.30 ppm; (PP 4F6870), alfalfa, forage at 3.0 ppm; alfalfa, hay at 4.0 ppm; and alfalfa, seed at 0.10 ppm (PP 5F6961). These notices included a summary of the petition prepared by IR-4 and BASF Corporation, the registrant. One comment was received in response to the notices of filing. EPA's response to this comment is discussed in Unit IV.C.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the

available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on vegetables, fruiting, group 8 at 0.10 ppm; fruit, pome, group 11 at 0.10 ppm; apple, wet pomace at 0.20 ppm; juneberry at 0.10 ppm; fruit, stone, group 12 at 0.10 ppm; pomergranate at 0.10 ppm; onion, green at 0.20 ppm; onion, welsh at 0.20 ppm; leek at 0.20 ppm, shallot at 0.2 ppm; strawberry at 0.10 ppm; wheat, grain at 0.10 ppm; wheat, forge at 3.0 ppm; wheat, hay at 0.60 ppm, wheat, straw at 0.30 ppm; alfalfa, forage at 3.0 ppm; alfalfa, hay at 4.0 ppm; and alfalfa, seed at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by pendimethalin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov/fdmspublic/component/main, see Docket OPP–2005–0056–0002*.

B. Toxicological Endpoints

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

A summary of the toxicological endpoints for pendimethalin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 12, 2006, 70 FR 18628–18635 (FRL–7770–4)

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.361) for the combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from pendimethalin in food as follows:

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. Tolerance-level residues were assumed for all food commodities with current and proposed pendimethalin tolerances, and it was assumed that all of the crops included in the analysis were treated (i.e., 100% crop treated). These assumptions result in highly conservative estimates of dietary exposure and risk.

iii. *Cancer*. Pendimethalin is classified ''Group C,'' possible human carcinogen, chemical based on a statistically significant increased trend and pair-wise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. The Agency used a non-linear approach (i.e., reference dose (RfD) approach) since mode of action studies are available that demonstrate that the thyroid tumors are due to a thyroid-pituitary imbalance, and also since pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ.

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

Based on the Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM-EXAMS) and screening concentration in ground water (SCI-GROW) models, the estimated environmental concentrations (EECs) of pendimethalin for acute exposures are estimated to be 39 parts per billion (ppb) for surface water and 0.024 ppb for ground water. The EECs for chronic exposures are estimated to be 4.8 ppb for surface water and 0.024 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). An acute dietary risk assessment for the peak water concentration value was not done because no such effects were identified in the toxicological studies for pendimethalin. For chronic dietary risk assessment, an estimated drinking water concentration (EDWC) of 0.039 ppm, the 1 in 10 year annual peak concentration in surface water as calculated by PRZM-EXAMS modeling, resulting from a single application of pendimethalin to apples at a rate of 4.0 lb of active ingredient/acre, was entered into DEEM.

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

flea and tick control on pets). Pendimethalin is currently registered for use on the following residential non-dietary sites: Landscapes, grounds plantings, ornamental crops, turf grass, and lawns. The risk assessment for residential non-dietary sites is discussed in Unit III.C.3. of the final rule published in the **Federal Register** of April 12, 2006, FR Page 18628–18635 (FRL–7770–4)

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The data base for pendimethalin does not indicate a potential for increased toxicological sensitivity from either prenatal or postnatal exposures. No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there evidence in the two-generation reproduction study of developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. There was no neurotoxicity observed in the submitted toxicity studies. Therefore, a developmental neurotoxicity (DNT) study is not required.

Available data show the thyroid is a target organ for pendimethalin. The endpoints and doses selected for risk assessment were based on the most sensitive effect, thyroid toxicity, which was well-characterized in both chronic and subchronic toxicity studies on the basis of clear NOAELs and LOAELs. In addition, the exposure data used to evaluate risks for the general U.S. population and infants and children are conservative, and therefore the calculated risks are considered to be protective.

3. *Conclusion*. There was no evidence of qualitative or quantitative susceptibility in the submitted data. Additionally, exposure estimates are based on very conservative data and assumptions that will overstate exposure to pendimethalin. There is, however, a concern that perturbation of thyroid homeostatis may lead to hypothyroidism, and possibly result in adverse effects on the developing nervous system. Since thyroid toxicity parameters were not measured in the developmental toxicity studies, the Agency has requested a developmental thyroid assay be conducted to evaluate the impact of pendimethalin on thyroid hormones, structure, and/or thyroid hormone homeostasis during development. The Agency has retained the additional 10X FQPA safety factor in the form of a database uncertainty factor (UF_{DB}) for the lack of the study, to be applied in determining pendimethalin risks.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. No toxic effects attributed to a single dose were identified for pendimethalin. Therefore an acute risk is not anticipated for this chemical.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pendimethalin from food and drinking water will utilize 11% of the chronic population adjusted dose (cPAD) for the U.S. population, 19% of the cPAD for infants, and 26% of the cPAD for Children 1 to 2 years of age. Based on the use pattern, chronic residential exposure to residues of pendimethalin is not expected.

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

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, drinking water and residential exposures aggregated result in aggregate MOEs of 580 for adult males, 520 for females 13 years or older, and 310 for children 1 to 2 years old. These aggregate MOEs do not exceed the Agency's level of concern (MOE 300) for aggregate exposure to food, drinking water and residential uses. See 71 FR 18628–18630, April 12, 2006.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Based on the currently registered and requested uses, there are no scenarios that are likely to result in intermediate-term exposure (30 to 180 days, continuously). Therefore an intermediate-term risk is not anticipated for pendimethalin.

5. *Aggregate cancer risk for U.S. population*. The Agency determined that the 0.10 mg/kg/day RfD for chronic risks, is protective of both the chronic, non-carcinogenic effects as well as the carcinogenic effect seen in the rat. Accordingly, based on the risk estimates for chronic risk above, EPA concludes that aggregate chronic exposure to pendimethalin is not expected to pose a cancer risk of concern.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for data collection and tolerance enforcement for existing and proposed uses of pendimethalin. Methods I through IV in PAM Vol. II are gas chromatography/electron capture (GC/ECD) methods. Methods used for data collection are essentially the same as the PAM Vol. II methods, and have been adequately validated.

The FDA PESTDATA database (PAM Volume I, Appendix I) indicates that pendimethalin is completely recovered (>80%) by Multiresidue Methods Section 302 (Luke method; Protocol D) and 303 (Mills, Onley, Gaither method; Protocol E, nonfatty), and partially recovered (50–80%) by Multiresidue Method Section 304 (Mills fatty food method; Protocol E, fatty). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no established or proposed Codex maximum residue limits (MRLs) for pendimethalin residues. Therefore, there are no questions of compatibility with respect to Codex MRLs and U.S. tolerances.

C. Response to Comments

One comment was received in response to the notices of filing for this action. The comment contained no scientific data or other substantive evidence to rebut the Agency's conclusion that there is a reasonable certaintythat no harm will result from aggregate exposure to pendimethalin from the establishment of these tolerances.

V. Conclusion

Therefore, tolerances are established for combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on alfalfa, forage at 3.0 ppm; alfalfa, hay at 4.0 ppm; and alfalfa, seed at 0.10 ppm; fruit, pome, group 11 at 0.10 ppm; apple, wet pomace at 0.20 ppm and juneberry at 0.10 ppm; fruit, stone, group 12 at 0.10 ppm; pomergranate at 0.10 ppm; onion, green at 0.20 ppm; onion, welsh at 0.20 ppm; leek at 0.20 ppm; and shallot at 0.2 ppm; strawberry at 0.10 ppm; wheat, grain at 0.10 ppm; wheat, forge at 3.0 ppm; wheat, hay at 0.60 ppm; wheat, straw at 0.30 ppm; and vegetables, fruiting, group 8 at 0.10 ppm.

VI. Statutory and Executive Order Reviews

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

VII. Congressional Review Act

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

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

List of Subjects 40 CFR Part 180

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

Dated: September 19, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.361 is amended by adding entries to the table in paragraph (a) to read as follows:

§ 180.361 Pendimethalin, Tolerances for Residues.

(a) * * *

Commodity	Parts per million
Alfalfa, Forage	3.0
Alfalfa, Hay	4.0
Alfalfa, Seed	0.10
Apple, wet pomace	0.20
* * * * *	
Fruit, pome, group 11	0.10
Fruit, stone, group 12	0.10
* * * * *	
Juneberry	0.10
Leek	0.20
* * * * *	
Onion, green	0.20
Onion, welsh	0.20
* * * * *	
Pomegranate	0.10
* * * * *	
Shallot	0.2
* * * * *	
Strawberry	0.10
* * * * *	
Vegetable, fruiting, group 8	0.10
Wheat, grain	0.10
Wheat, forage	3.0
Wheat, hay	0.60
Wheat, straw	0.30

[FR Doc. 06–8254 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0204; FRL–8094–5]

Quizalofop ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of quizalofop ethyl in or on the raw agricultural commodities barley, grain; barley, hay; barley, straw; flax, seed; milk, fat; sunflower, seed; wheat, forage; wheat, grain; wheat, hay; and wheat, straw. Nissan Chemical Industries, Ltd requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0204. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5697; e-mail address: *Tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in

accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0204, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 2, 2006 (71 FR 43762) (FRL–8057–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6076) by Nissan Chemical Industries, Ltd (Nissan), 7-1,3-Chome, Kanda-Nishiki-Cho Chiyoda-Ku, Tokyo, 101–0054, Japan. The petition requested that 40 CFR 180. 441 be amended by establishing a tolerance for residues of the herbicide quizalofop-p-ethyl on barley, flax (seed) and wheat at 0.05 part per million (ppm) and sunflower (seed) at 2.0 part per million. That notice included a summary of the petition prepared by Nissan Chemical Industries, Ltd, the registrant. There were no comments received in response to the notice of filing.

During the course of the review, the Agency determined that based on the calculated maximum dietary burdens (MTDBs) for quizalofop-p ethyl the current tolerance for milk, fat should be increased. Therefore, the petition was subsequently amended to propose that 40 CFR 180.441(a)(2) be amended by proposing a tolerance be established for the combined residues of the herbicide quizalofop, (2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoic acid), quizalop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoate), and quizalofop-methyl (methyl 2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoate), all expressed as quizalofop ethyl on milk, fat at 0.25 ppm. This tolerance will replace the current milk, fat tolerance listing of 0.05 ppm. During the course of the review the Agency also determined that the available data supported a reduction in the proposed tolerance for sunflower, seed and that the commodities for barley and wheat needed to be defined based on current terminology. The petition was also amended propose that 40 CFR 180.441(a)(3) be amended by proposing that tolerances be established for the combined residues of the herbicide quizalofop-p ethyl ester (ethyl (R)-2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanonate) and its acid metabolite quizalofop-p [R-(2-(4-((6-quinoxalin-2-yl)phenoxy)propanoic acid] and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the raw agricultural commodities barley, grain at 0.05 ppm; barley, hay at 0.05 ppm; barley, straw at 0.05 ppm; flax, seed at 0.05 ppm; sunflower, seed at 1.9 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.05 ppm; wheat, hay at 0.05 ppm; and wheat, straw at 0.05 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of quizalofop, quizalofop-ethyl, and quizalofop-methyl, all expressed as quizalofop ethyl on milk, fat at 0.25 ppm, and for the combined residues of quizalofop-p ethyl ester, quizalop-p, and the S-enantiomers of both the ester and the acid , all expressed as quizalofop ethyl in or barley, grain at 0.05 ppm; barley, hay at 0.05 ppm; barley, straw at 0.05 ppm; flax, seed at 0.05 ppm; sunflower, seed at 1.9 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.05 ppm; wheat, hay at 0.05 ppm; and wheat, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by quizalofop ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the **Federal Register** of June 16, 1998 *http://www.epa.gov/fedrgstr/EPA-PEST/1998/June/Day-16/p15746.htm.*

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as

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

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

A summary of the toxicological endpoints for quizalofop ethyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 16, 1998 *http://www.epa.gov/fedrgstr/EPA-PEST/1998/June/Day-16/p15746.htm.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.441) for the combined residues of quizalofop, quizalofop-p ethyl and associated metabolites, all expressed as quizalofop ethyl , in or on a variety of raw agricultural commodities. Tolerances have been established under 40 CFR 180.441(a)(2) for quizalofop, quizalofop-ethyl, and quizalofop-methyl, all expressed as quizalofop ethyl in meat, fat, and meat byproducts of cattle, goat, hog, horse poultry, and sheep; milk and milk, fat and egg. Risk assessments were conducted by EPA to assess dietary exposures from quizalofop ethyl in food as follows:

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

No such effects were identified in the toxicological studies for quizalofop ethyl; therefore, a quantitative acute dietary exposure assessment is unnecessary

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCIDTM), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: tolerance level residues for all commodities and 100 percent crop treated. The assessment included existing food uses as well as the newly proposed tolerances for uses on barley, wheat, sunflower, and flax. PCT and/or anticipated residues were not used.

iii. *Cancer.* EPA concluded that quizalofop ethyl should be classified as a Category D carcinogen (not classifiable as to human carcinogenicity), based on results of rat and mouse cancer studies along with other relevant short-term toxicity, mutagenicity studies, and structure-activity relationships. The Group D classification is based on an approximate doubling in the incidence of mice liver tumors between controls and the high-dose. This finding was not considered strong enough to warrant the classification of a Category C (possible human carcinogen); the increase was of marginal statistical significance, occurred at high dose which exceeded the MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high-dose control group was at the upper end of the previous historical control groups. Based on the results of the above adequate studies, the Agency believes that quizalofop-p ethyl does not pose a significant cancer risk to humans and a quantitative cancer exposure assessment is unnecessary.

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

Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of quizalofop ethyl for chronic exposures are 1.99 parts per billion (ppb) for surface water and 0.15 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID). For chronic dietary risk assessment, the annual average concentration in surface water of 1.99 ppb was used to assess the contribution to drinking water.

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

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

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a

different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There are no concerns and no residual uncertainties for increased qualitative or quantitative susceptibility following *in utero* or prenatal/postnatal exposure or for prenatal and postnatal toxicity. See the **Federal Register** of June 16, 1998 *http://www.epa.gov/fedrgstr/EPA-PEST/1998/June/Day-16/p15746.htm.*

A developmental neurotoxicity study is not required for quizalofop ethyl based on the following:

i. Quizalofop ethyl does not appear to be a neurotoxic chemical.

ii. No-treatment -related effects on brain weight or histopathology of the nervous system were observed in studies that measured these endpoints.

iii. No evidence of developmental anamalies of the fetal nervous system were observed in either rats or rabbits, at maternally toxic doses up to 300 and 600 mg/kg/day, respectively.

iv. No evidence of an effect on functional development was observed in a postnatal segment of the developmental toxicity study in rats.

3. *Conclusion.* There is a complete toxicity data base for quizalofop ethyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed because the toxicology data base is complete; a developmental neurotoxicity study is not required; developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits; a 2-generatioin reproduction study showed no increased sensitivity in pups as compared to adults; and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Quizalofop-ethyl is not expected to pose an acute risk because no toxicological endpoints attributable to a single exposure (dose) were identified in the toxicology data base.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to quizalofop-ethyl from food will utilize 11% of the cPAD for the U.S. population, 27% of the cPAD for infants <1 year old, and 29% of the cPAD for children 1 to 2 years old.. There are no current or requested residential uses for quizalofop-ethyl that result in chronic residential exposure to quizalofop-ethyl. Therefore, EPA does not expect the aggregate exposures, which are equivalent to chronic dietary exposures, to exceed 100% of the cPAD.

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

Quizalofop ethyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

Quizalofop ethyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S.* population. For the reasons stated in this unit, quizalofop ethyl is not expected to pose a greater than negligible cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High Performance Liquid Chromatography (HPLC) Methods, SARS–98–06 (for flax and sunflower) and Morse Method Meth-147 (for wheat and barley)) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There is a Canadian maximum residue limit (MRL) in/on flax at 0.05 mg/kg, which is in agreement with the proposed tolerance on flax, seed. There are no Mexican or Codex MRLs established for quizalofop ethyl, therefore compatibility is not a problem at this time.

V. Conclusion

Therefore, the tolerance is established under 40 CFR 180.441(a)(2) for the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoic acid), quizalop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoate), and quizalofop-methyl (methyl 2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoate), all expressed as quizalofop ethyl in or on milk, fat at 0.25 ppm. This tolerance will replace the current milk, fat tolerance listing of 0.05 ppm. Tolerances are also established under 40 CFR 180.441(a)(3) for the combined residues of the herbicide quizalofop-p ethyl ester (ethyl (R)-2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxypropanonate] and its acid metabolite quizalofop-p [R-(2-(4-((6-quinoxalin-2-yl)phenoxy)propanoic acid] and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the raw agricultural commodities barley, grain at 0.05 ppm; barley, hay at 0.05 ppm; barley, straw at 0.05 ppm; flax, seed at 0.05 ppm; sunflower, seed at 1.9 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.05 ppm; wheat, hay at 0.05 ppm; and wheat, straw at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 19, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.441 is amended by revising the listing for milk, fat in the table to paragraph (a)(2) and by amending the table in paragraph (a)(3) by alphabetically adding commodities to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * *	* *
Milk, fat	0.25
* * *	* *

(3) * * *

Commodity	Parts per million
Barley, grain	0.05
Barley, hay	0.05
Barley, straw	0.05
* * *	* *
Flax, seed	0.05
Sunflower, seed	1.9
* * *	* *
Wheat, forage	0.05
Wheat, grain	0.05
Wheat, hay	0.05
Wheat, straw	0.05

* * * * *

[FR Doc. 06–8253 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0056; FRL–8093–5]

Bentazon, Carboxin, Dipropyl Isocinchomeronate, Oil of Lemongrass (Oil of Lemon) and Oil of Orange; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the fungicide carboxin, the insecticide dipropyl isocinchomeronate, and the fungicide/animal repellent oil of lemon (oil of lemongrass) and oil of orange. Also, EPA is modifying certain tolerances for the herbicide bentazon and the fungicide carboxin. In addition, EPA is establishing new tolerances for the herbicide bentazon.

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006, and must be filed in accordance with the

instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0056. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Monisha Dandridge, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0410; e-mail address: *dandridge.monisha@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the Food Quality Protection Act (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0056 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0056, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of July 14, 2006 (71 FR 40051) (FRL–8075–4), EPA issued a proposed rule to revoke, modify, and establish certain tolerances and tolerance exemptions for residues of the herbicide bentazon, the fungicide carboxin, the insecticide dipropyl isocinchomeronate, and the fungicide/animal repellent oil of lemon (oil of lemongrass), and oil of orange. Also, the proposal of July 14, 2006 (71 FR 40051) provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

EPA is revoking, modifying, and establishing specific tolerances for residues of the herbicide bentazon, the fungicide carboxin, the insecticide dipropyl isocinchomeronate, and the fungicide/animal repellent oil of lemon (oil of lemongrass) and oil of orange in or on commodities listed in the regulatory text.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of the reregistration and when taking action on tolerances and exemptions, EPA is required to determine whether each of the amended tolerances or exemptions meets the safety standards under the FQPA. The safety finding determination of ''reasonable certainty of no harm'' is found in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings and change commodity

names and groupings in accordance with new EPA policy. Printed copies of REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone: 1–800–490–9198; fax: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone: 1–800–553–6847 or (703) 605–6000; internet at *http://www.ntis.gov.* Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm.*

In this final rule, EPA is revoking certain tolerances and tolerance exemptions because these specific tolerances and exemptions correspond to uses no longer current or registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of July 14, 2006 (71 FR 40051). EPA received no comments during the 60–day public comment period.

1. *Bentazon.* The available residue data for bentazon indicate that the established tolerances for cowpea, forage; pea, dry, seed; pea, field, hay; soybean, forage; and soybean, hay should be increased to account for increased residue levels. Therefore, EPA is increasing tolerances in 40 CFR 180.355(a)(1) for the residues of bentazon in or on cowpea, forage from 3.0 to 10.0 parts per million (ppm); pea, dry, seed from 0.05 to 1.0 ppm; pea, field, hay from 3.0 to 8.0; soybean, forage from 3.0 to 8.0 ppm and soybean, hay from 0.3 to 8.0 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The Agency determined that the tolerance on pepper, nonbell should be decreased to 0.05 ppm, which is the limit of detection for bentazon residues of concern. Therefore, the Agency is decreasing the tolerances in 40 CFR 180.355(a)(1) for the combined residues of bentazon and its metabolites in or on pepper, nonbell to 0.05 ppm.

The processing data on rice indicate the residues concentrate in hulls. Therefore, EPA is establishing a tolerance in 40 CFR 180.355(a)(1) for the combined residues of bentazon and its metabolites in or on rice, hulls at 0.25 ppm.

In order to conform to current Agency policy on commodity terminology, EPA is modifying the tolerance in 40 CFR 180.355(a)(1), for residues of bentazon in or on mint to peppermint, tops and spearmint, tops and maintaining the tolerance level at 1.0 ppm.

2. *Carboxin.* According to the TRED, the current tolerance expression, ''combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on raw agricultural commodities as follows:'' in 40 CFR 180.301(a) should be modified. The residue chemistry data indicate that as crops mature, insoluble anilide complexes as well as polar metabolites increase. These complexes of carboxin or carboxin derivatives with macromolecules such as lignin are insoluble in water and organic solvents and liberate aniline upon hydrolysis. Further, analytical methods for detection of carboxin regulated residues produce aniline (convert carboxin and carboxin derived metabolite to aniline), which is determined either spectrophotometrically or by gas-liquid chromatography (GLC). Therefore, the residues of concern are carboxin, carboxin sulfoxide, and insoluble anilide complexes. Consequently, EPA is revising the tolerance expression in 40 CFR 180.301(a) to read as follows: ''(a) *General.* Tolerances are established for the combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolites determined as aniline and expressed as parent compound, in or on food commodities as follows:''

Because bean forage, hay, and straw are no longer considered significant livestock feed stuffs and have been deleted from Table OPPTS 860.1000 (available at *http://www.epa.gov/opptsfrs/OPPTS_Harmonized/ 860_Residue_Chemistry_Test_Guidelines/Series*): the tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.301(a) on bean, forage; bean, hay; and bean, straw.

Carboxin has had no active registrations for uses on sorghum over a period of many years. Therefore, EPA is revoking the tolerances in 40 CFR 180.301(a) for residues of carboxin in or on sorghum that are no longer needed; EPA is revoking the tolerances in 40 CFR 180.301(a) for sorghum, forage; sorghum, grain; and sorghum, grain, stover.

Based on the ruminant feeding study, the lack of residues detected on the poultry feedstuff produced from treated seeds, and the use of carboxin only as a fungicide on seeds indicating there is no propensity for residues to accumulate in animal tissues, the tolerance should be established at the level of quantitation of the analytical method of 0.05 ppm rather than the current tolerance level of 0.01 ppm. Therefore, EPA is increasing the tolerances in 40 CFR 180.301(a) for combined residues of carboxin and its metabolites in or on egg from 0.01 to 0.05 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on ^{14}C-radiolabeled dairy cattle feeding data at an exaggerated 1.15x feeding level, milk showed combined carboxin residues of concern. The ^{14}C-radiolabeled feeding study had a lower limit of quantitation (LOQ) than the enforcement method and therefore the tolerance should be established at the LOQ of the enforcement analytical method (0.05 ppm). Therefore, EPA is increasing the tolerance in 40 CFR 180.301(a) for combined residues of carboxin and its metabolites in or on ''milk'' from 0.01 to 0.05 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

A dairy cattle feeding study conducted at an exaggerated (1.15x) feeding level, shows combined carboxin regulated residues were as low as 0.023 and 0.007 ppm in meat and fat. Therefore, EPA is decreasing the tolerances in 40 CFR 180.301(a) for residues of carboxin in or on cattle, fat; cattle, meat; goat, fat; goat, meat; hog, fat; hog, meat; horse, fat; horse, meat; sheep, fat; and sheep, meat from 0.1 to 0.05 ppm, respectively.

In order to conform to current Agency practice, EPA is revising the commodity terminology in 40 CFR 180.301(a), for residues of carboxin in or on corn, stover to read corn, field, stover; corn, pop, stover and corn, sweet, stover; corn, forage to corn, field, forage; and, corn, sweet, forage; corn, fresh, including sweet corn, kernel plus cob with husks removed to read corn, sweet, kernel plus cob with husks removed; corn, grain to corn, field, grain and corn, pop, grain; oat, seed to read oat, grain; rice to rice, grain; and soybean to read soybean, seed.

3. *Dipropyl isocinchomeronate (MGK 326).* There have been no active registrations for uses associated with livestock or milk commodities since 1996, such that these tolerances are no longer needed, and therefore EPA is revoking the commodity tolerances in 40 CFR 180.143(a) for residues of dipropyl isocinchomeronate in or on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; and, sheep, meat byproducts.

4. *Oil of lemongrass (oil of lemon) and oil of orange.* Oil of lemon is not a registered pesticide active ingredient nor has it ever been an active ingredient in any pesticide product. However, the Agency has determined that the exemptions from the requirement of a tolerance under 40 CFR 180.1238 apply to oil of lemongrass, which is a registered active ingredient included in the 1993 RED entitled Flower and Vegetable Oils. Oil of lemongrass and oil of lemon are distinct and not synonyms. There have been no active food-use registrations within the past 10 years which contain either oil of lemongrass or oil of orange as pesticide active ingredients. Therefore, EPA is revoking the tolerance exemptions on raw agricultural commodities in 40 CFR 180.1238 and 180.1239 for oil of lemon (oil of lemongrass) and oil of orange, respectively, when used as a postharvest fungicide.

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

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the FQPA. The safety finding determination is found in detail in each RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued a post-FQPA RED for carboxin and dipropyl isocinchomeronate (MGK 326), and a pre-FQPA RED for bentazon, whose tolerances were reassessed post-FQPA as part of the Agency's determination on March 8, 2000 (65 FR 12122) (FRL–6492–7) to establish new bentazon uses and therefore a TRED to reassess its tolerances was not needed. Also, EPA has issued a TRED for oil of lemongrass (oil of lemon) and oil of orange, as these active ingredients were part of the Flower and Vegetable Oils pre-FQPA RED. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document are considered reassessed by the determination that the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6 (c)).

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to

this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised By This Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov.* On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

In this final rule EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation (this Agency document is available in the docket of this final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations

that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 20, 2006.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.143 [Removed]

■ 2. Section 180.143 is removed.

■ 3. Section 180.301 is amended by revising paragraph (a) to read as follows:

§ 180.301 Carboxin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolites determined as aniline and expressed as parent compound, in or on food commodities as follows:

Commodity	Parts per million
Barley, grain	0.2
Barley, straw	0.2
Bean, dry, seed	0.2
Bean, succulent	0.2
Canola, seed	0.03
Cattle, fat	0.05
Cattle, meat byproducts	0.1
Cattle, meat	0.05
Corn, field, forage	0.2
Corn, field, grain	0.2
Corn, field, stover	0.2
Corn, pop, grain	0.2
Corn, pop, stover	0.2
Corn, sweet, forage	0.2
Corn, sweet, kernel plus cob with husks removed	0.2
Corn, sweet, stover	0.2
Cotton, undelinted seed	0.2
Egg	0.05
Goat, fat	0.05
Goat, meat byproducts	0.1
Goat, meat	0.05
Hog, fat	0.05
Hog, meat byproducts	0.1
Hog, meat	0.05
Horse, fat	0.05
Horse, meat byproducts	0.1
Horse, meat	0.05
Milk	0.05
Oat, forage	0.5
Oat, grain	0.2
Oat, straw	0.2
Onion, bulb	0.2
Peanut	0.2
Peanut, hay	0.2
Poultry, fat	0.1
Poultry, meat byproducts	0.1
Poultry, meat	0.1
Rice, grain	0.2
Rice, straw	0.2
Safflower, seed	0.2
Sheep, fat	0.05
Sheep, meat byproducts	0.1
Sheep, meat	0.05
Soybean, seed	0.2
Wheat, forage	0.5
Wheat, grain	0.2
Wheat, straw	0.2

* * * * *

■ 4. Section 180.355 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Bean, dry, seed	0.05
Bean, succulent	0.5
Corn, field, forage	3.0
Corn, field, grain	0.05
Corn, field, stover	3.0
Corn, pop, grain	0.05
Corn, sweet, kernel plus cob with husks removed	0.05
Cowpea, forage	10.0
Cowpea, hay	3.0
Flax, seed	1.0
Pea, dry, seed	1.0
Pea, field, hay	8.0
Pea, field, vines	3.0
Pea, succulent	3.0
Peanut	0.05
Peanut, hay	3.0
Pepper, nonbell	0.05
Peppermint, tops	1.0
Rice, grain	0.05
Rice, hulls	0.25
Rice, straw	3.0
Sorghum, forage	0.20
Sorghum, grain	0.05
Sorghum, grain, stover	0.05
Soybean, forage	8.0
Soybean, hay	8.0
Soybean, seed	0.05
Spearmint, tops	1.0

* * * * *

§§ 180.1238 and 180.1239 [Removed]

■ 5. Section 180.1238 and 180.1239 are removed.

[FR Doc. 06–8255 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0016; FRL–8085–2]

Metconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of metconazole in or on bananas. BASF Agricultural Products requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0016. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at*http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0016 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0016, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of April 8, 2005, (67 FR 18008) (FRL–7703–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E5052) by BASF Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528 agent for Kureha Corporation, 3–3–2 Nihonbashi-Hamacho, Chuo-ku, Tokyo 103–8552, Japan. The petition requested that 40 CFR be amended by establishing a tolerance for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on bananas at 0.05 parts per million (ppm). That notice included a summary of the petition prepared by BASF Agricultural Products, the agent for the petitioner. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV,C. below.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of metconazole on banana at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by metconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* under the docket ID number EPA–HQ–OPP–2005–0016.

B. Toxicological Endpoints

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

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

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

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-49 years of age)	NOAEL = 12 mg/kg/day UF = 100 Acute RfD = 0.12 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.12 mg/kg/day	Developmental toxicity - rats LOAEL = 30 mg/kg/day based on increases in skeletal variations
Chronic Dietary (All populations)	NOAEL = 4.3 mg/kg/day UF = 100 Chronic RfD = 0.04 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.04 mg/kg/day	Chronic oral toxicity - rats LOAEL = 13.1 mg/kg/day based on increased liver (M) weights and associated hepatocellular lipid vacuolation (M) and centrilobular hypertrophy (M). Same effects seen (F) at 54 mg/kg/day, plus increased speen weight
Cancer (oral, dermal, inhalation)	Classification: ''Not Likely to be Carcinogenic to Humans''		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. There are currently no tolerances established (40 CFR 180) for the residues of metconazole. Use of metconazole on soybeans has been authorized under Section 18 of FIFRA. Risk assessments were conducted by EPA to assess dietary exposures from metconazole in/on imported bananas and soybeans as follows:

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

In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, version 2.03), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessment: Tolerance level residues and 100% crop treated were assumed for bananas and soybeans.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the software with the (DEEM-FCID™, version 2.03), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated were assumed for bananas and soybeans.

iii. *Cancer*. Metconazole is classified as ''Not Likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. A non-genotoxic mode of action for mouse liver tumors was established. An exposure assessment is not necessary.

2. *Dietary exposure from drinking water*. There is no expectation that

residues from metconazole use on imported banana would occur in surface or ground water sources of drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of metconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/models4.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Groundwater (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of metconazole, resulting from use on soybeans for acute exposures are estimated to be 1.57 parts per billion (ppb) for surface water and 0.04 ppb for ground water. The EDWCs for chronic exposures are estimated to be 0.48 ppb for surface water and 0.04 ppb for ground water. Use on imported bananas will not contribute to residues in water in the United States.

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

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

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

Metconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between this pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events. A variable pattern of toxicological responses are found for conazoles. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles have a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to the toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Metconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including metconazole, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at http://www.regulations.gov, Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The database for metconazole is adequate for FQPA consideration. The two-generation reproduction study was performed with *cis*-only metconazole (not *cis/trans* metconazole). However, the database contains a sufficient number of subchronic and developmental toxicity studies with *cis/trans* metconazole to adequately assess *cis/trans* metconazole toxicity and to bridge the data gap. In addition, acceptable development toxicity studies are available in both rats and rabbits. The effect seen in these studies do not indicate that pups are more susceptible: pup effects were only seen in the presence of maternal toxicity and, in general, were of comparable or less severity to the effects observed in adults. Metconazole did not exhibit neurotoxicity in any of the submitted data.

3. *Conclusion*. There is a complete toxicity data base for metconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, and in the 2-generation rat reproduction study. There are no residual uncertainties concerning prenatal and postnatal toxicity and no neurotoxicity concerns. The acute and chronic dietary (food + drinking water) exposure assessments are conservative assessments that are based on reliable data and will not underestimate exposure/risk. There is no potential for drinking water exposure from the proposed use on imported bananas. Additionally, there is no potential for residential exposure. Based on these data and conclusions, the FQPA Safety Factor is reduced to 1X.

E. Aggregate Risks and Determination of Safety

To assess aggregate risk, drinking water estimates were incorporated directly into the dietary analysis, rather than using back-calculated drinking water levels of comparison (DWLOCs).

To better evaluate aggregate risk associated with exposure through food and drinking water, EPA is no longer comparing Estimated Drinking Water Concentrations (EDWCs) generated by water quality models with DWLOC. Instead, EPA is now directly incorporating the actual water quality model output concentrations into the risk assessment. This method of incorporating water concentration into our aggregate assessments relies on actual CSFII reported drinking water consumptions and more appropriately reflects the full distribution of drinking water concentrations.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metconazole will occupy < 1% of the aPAD for females 13 years and older, the only population subgroup of concern. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, and therefore is below the Agency's level of concern.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to metconazole from food and water will utilize 2% of the cPAD for the U.S. population, 5% of the cPAD for children 1-2 years old, the most highly exposed population subgroup. There are no residential uses for metconazole that result in chronic residential exposure to metconazole. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, and therefore is below the Agency's level of concern.

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

Metconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

Metconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified metconazole as ''Not Likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range and that carcinogenic effects were seen in animals only at higher doses. A non-genotoxic mode of action for mouse liver tumors was established. Given that metconazole's cancer effects are a threshold effect and that the threshold is well above other chronic effects, the chronic RfD is protective against any cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen phosphorus detection (GC/NPD) method (American Cyanamid Method M 2722)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Canadian, Mexican or Codex MRL or tolerances for metconazole.

C. Response to Comments

A private citizen responded to PP 9E5052. Comments were received on April 17, 2005 objecting to the use and sale of this product, animal testing, profiteering and lack of satisfactory combined and long-term testing. The Agency response is as follows: The Agency has a toxicity data base and it is considered sufficient to adequately assess metconazole, which includes several long-term or chronic studies. The commenter submitted no scientific information or data to support their claims. EPA has responded to such generalized comments on numerous previous occasions, for example, on January 7, 2005 (70 FR 1354) (FRL–7681–9) and on October 29, 2004 (69 FR 63083) (FRL–7691–4).

V. Conclusion

Therefore, a tolerance is established for residues of metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on banana at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 18, 2006.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.617 is added to read as follows:

§ 180.617 Metconazole; tolerances for residues.

(a) *General*. Tolerances are established for the residue of the fungicide metconazole (5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol) in or on the following commodity:

Commodity	Parts per million
Banana[1]	0.1

[1] No U.S. registration as of August 30, 2006.

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

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

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

[FR Doc. 06–8256 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0058; FRL–8091–5]

Ethaboxam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of ethaboxam in or on grape at 6.0 parts per million (ppm), with no U.S. registration. Landis International, Inc., agent for LG Life Sciences, Ltd. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0058. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0058 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0058, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 6, 2005 (70 FR 38918) (FRL–7719–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6863) by LG Life Sciences, Ltd., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. The petition requested that 40 CFR 180.622 be amended by establishing a tolerance for residues of the fungicide ethaboxam, *N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethlyamino)-5-thiazolecarboxamide, in or on grape, grape juice, and raisins at 6.0 ppm. That notice included a summary of the petition prepared by the registrant LG Life Sciences, Ltd., c/o Landis International, Inc. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/oppfead1/trac/science*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of ethaboxam on grape at 6.0 ppm. Studies examining the transfer of ethaboxam to processed grape commodities (e.g., grape juice, raisins) show that some concentration of ethaboxam may occur during the production of raisins and grape juice; however, the supported tolerance of 6.0 ppm for grape is sufficient to cover the potential for residues in the processed commodities, and separate tolerances for these commodities are not needed. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by ethaboxam as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found in the electronic docket (docket ID number EPA–HQ–OPP–2005–0058) for this rule at *http://www.regulations.gov* or *http://www.epa.gov/opprd001/factsheets*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent

in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

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

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

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–49 years of age)	NOAEL = 30 mg/kg/day UF = 100 Acute RfD = 0.3 mg/kg/day	Special FQPA SF = 1 aPAD = acute RfD/Special FQPA SF = 0.3 mg/kg/day	Developmental Toxicity Rat LOAEL = 100 mg/kg/day based on abnormal liver lobation
Acute Dietary (General population including infants and children)	NOAEL = N/A UF = N/A Acute RfD = N/A	Special FQPA SF = N/A aPAD = acute RfD/Special FQPA SF = N/A	No appropriate endpoint attributable to a single dose identified. LOAEL = N/A
Chronic Dietary (All populations)	NOAEL= 5.5 mg/kg/day UF = 100 Chronic RfD = 0.055 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/Special FQPA SF = 0.055 mg/kg/day	Combined Chronic/Carcinogenicity-Rat LOAEL = 16.4 mg/kg/day based on effects observed in the male reproductive organs (testes, epididymides, prostate, and seminal vesicles).
Cancer (oral, dermal, inhalation)	N/A	N/A	The Agency classified ethaboxam as having ''suggestive evidence of carcinogenicity.''

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Risk assessments were conducted by EPA to assess dietary exposures from ethaboxam in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. No such effects were identified in the toxicological studies for ethaboxam that pertain to the general population including infants and children; however, an effect of concern was identified for females, 13–49 years of age. Therefore, a quantitative acute dietary exposure assessment was necessary for females, 13–49 years of age.

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

iii. *Cancer*. The Agency classified ethaboxam as having ''suggestive evidence of carcinogenicity.'' The Agency concluded that the quantification of carcinogenic potential is not required.

2. *Dietary exposure from drinking water*. This petition is not associated with an application to register ethaboxam uses in the U.S. Ethaboxam is proposed for use on fruit commodities that may be imported into the U.S., thus, the source of exposure expected for ethaboxam is solely from residues in food. Consequently, an exposure assessment that includes ethaboxam residues in drinking water is not warranted at this time.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethaboxam is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. There is evidence of increased qualitative susceptibility in the rat developmental and reproduction studies. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for ethaboxam, the degree of concern for prenatal and postnatal effects observed in the studies is low based on the following: The developmental/offspring effects observed in the studies are well characterized and occur in the presence of maternal toxicity; a clear NOAEL has been identified in both of the studies; and there are no residual uncertainties for pre-and/or postnatal toxicity. Furthermore, the toxicology endpoint established for risk assessment is based on a lower NOAEL than the reproductive NOAEL, and thus is considered protective of developmental/offspring effects.

3. *Conclusion*. The Agency recommends that the FQPA safety factor be reduced to 1X because there are no/low concerns and no residual uncertainties with regard to pre- and post-natal toxicity. Although there was evidence of increased qualitative susceptibility observed in rat developmental and reproduction studies, the studies submitted adequately address questions regarding pre- and post- natal toxicity, and the developmental/offspring effects observed in the studies are well characterized (clear NOAELs established). The toxicology endpoint established for risk assessment is based on a lower NOAEL than the reproductive NOAEL, and is considered protective of the developmental/offspring effects observed. In addition, the toxicology endpoint established for risk assessment is also considered protective of the male reproductive alterations observed in the toxicology database. There is a complete toxicity database for ethaboxam and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to ethaboxam will occupy 10% of the aPAD for the U.S. population and 4% of the aPAD for females 13 years and older.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to ethaboxam from food will utilize 6% of the cPAD for the U.S. population, 9% of the cPAD for all infants less than 1 year of age, and 31% of the cPAD for children 1–2 years of age. There are no residential uses for ethaboxam that result in chronic residential exposure to ethaboxam.

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

Ethaboxam is not registered for use on any sites that would result in residential exposure or residues in drinking water. Therefore, the aggregate risk is the sum of the risk from food only, which does not exceed the Agency's level of concern.

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

Ethaboxam is not registered for use on any sites that would result in residential exposure or residues in drinking water. Therefore, the aggregate risk is the sum of the risk from food only, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency classified ethaboxam as having ''suggestive evidence of carcinogenicity based on Leydig cell tumors observed in male rats.'' The Agency has determined that potential human risk to Leydig cell tumorigenesis would not be expected at exposure levels that do not cause tumors in rats. The NOAEL and LOAEL selected for the chronic reference dose (cRfD) is based on reproductive toxicity observed at lower doses than the Leydig cell tumor response. Thus, the cRfD would be protective of the cancer effects.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

V. Conclusion

Therefore, an imported tolerance is established for residues of ethaboxam, *N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethylamino)-5-thiazolecarboxamide, in or on grape at 6.0 ppm. Studies examining the transfer of ethaboxam to processed grape commodities (e.g., grape juice, raisins) show that some concentration of ethaboxam may occur during the production of raisins and grape juice; however, the supported tolerance of 6.0 ppm for grape is sufficient to cover the potential for residues in the processed commodities, and separate tolerances for these commodities are not needed.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 13, 2006.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.622 is added to read as follows:

§ 180.622 Ethaboxam; tolerances for residues.

(a) *General*. Tolerances are established for residues of ethaboxam, *N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethlyamino)-5-thiazolecarboxamide in or on the following commodity:

Commodity	Parts per million
Grape[1]	6.0

[1] There is no U.S. registration as of September 27, 2006

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

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

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

[FR Doc. 06–8176 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0036; FRL–8089–6]

p-Chlorophenoxyacetic acid, Glyphosate, Difenzoquat, and Hexazinone; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the plant growth regulator *p*-chlorophenoxyacetic acid and the herbicide hexazinone. Also, EPA is modifying certain tolerances for the plant growth regulator *p*-chlorophenoxyacetic acid and the herbicides glyphosate, difenzoquat, and hexazinone. In addition, EPA is establishing new tolerances for the herbicides difenzoquat and hexazinone.

DATES: This regulation is effective September 27, 2006. Objections and requests for hearings must be received on or before November 27, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0036. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0036 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 27, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0036, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of June 7, 2006 (71 FR 32899) (FRL–8062–7), EPA issued a proposed rule to revoke, remove, modify, and establish certain tolerances and/or tolerance exemptions for residues of the plant growth regulator *p*-chlorophenoxyacetic acid and the herbicides glyphosate, difenzoquat, and hexazinone. The proposal of June 7, 2006 also provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

EPA is revoking, removing, modifying, and establishing specific tolerances for residues of the plant growth regulator *p*-chlorophenoxyacetic acid and the herbicides glyphosate, difenzoquat, and hexazinone in or on commodities listed in the regulatory text.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of reregistration and when taking action on tolerances and exemptions, EPA is required to determine whether each of the amended tolerances or exemptions meets the safety standards under FQPA. The safety finding determination of ''reasonable certainty of no harm'' is found in detail in each RED and TRED for the active ingredient. REDs and TREDs recommend certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet address: *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet address: *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and tolerance exemptions because these specific tolerances and exemptions correspond to uses no longer current or registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

— Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

— EPA independently verifies that the tolerance is no longer needed.

— The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of June 7, 2006, EPA received three comments during the 60–day public comment period, as follows:

• *Comment*. A comment was received from a private citizen that expressed concern with pesticide residues in general and that animals should eat quality foods. The individual stated that pesticide residue levels should be zero.

• *Agency response*. The private citizen's comment did not take issue with the Agency's conclusion that certain tolerances should be revoked. It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

1. *Hexazinone*.

• *Comment*. A comment was received from DuPont Crop Protection who requested that the current regional tolerances on sugarcane, cane and sugarcane molasses in 40 CFR 180.396(c), which excludes use of hexazinone on sugarcane in Florida, be codified as general tolerances. The commenter stated that two of DuPont Crop Protection's registrations for use of hexazinone on sugarcane in Florida are currently active.

Also, the commenter requested that EPA not revoke the tolerances in 40 CFR 180.396 for fat of cattle, goats, hogs, horses, and sheep, and meat and meat byproducts of hogs because later this year it will submit grass residue data to support a revised zero–day forage/grazing restriction (current labels show a 60–day restriction which is not considered to be practical by the Agency). The commenter stated that it expects increased residues warranting a revision of existing tolerances for both grass and hay as livestock feed commodities.

In addition, the commenter stated that an analysis on current hexazinone registrations for use on cattle feed commodities conducted by the Florida Department of Agriculture and Consumer Services in 2005 may show that tolerances for hexazinone on meat, meat byproducts, and in milk may be exceeded based on a maximum theoretical dietary burden.

• *Agency response*. Since the time of the 2002 hexazinone TRED, EPA agrees that the Agency did approve two registrations submitted by DuPont Crop Protection for use of hexazinone on sugarcane in Florida. Based on these registrations, EPA believes that since there are no regional sugarcane registrations that specifically exclude hexazinone use in Florida; therefore, these tolerances need not be codified as regional. Since this regulatory action was not in the original **Federal Register** proposal, recodifying the sugarcane, cane and sugarcane molasses tolerances from 40 CFR 180.396(c) to (a) as general tolerances will need to be proposed separately in a future action. Moreover, in its comment, DuPont Crop Protection did not take issue with the Agency's proposal to modify the sugarcane tolerances. Available data indicate combined residues of hexazinone and its regulated metabolites were <0.35 parts per million (ppm) in or on sugarcane. Based on the combined LOQs (0.55 ppm) of the enforcement method for parent plus metabolites, the Agency determined that the tolerance for sugarcane, cane should be increased to 0.6 ppm. Also, based on available sugarcane processing data, the Agency determined that residues of hexazinone and its metabolites concentrated 32–fold to final (blackstrap) molasses, the form of molasses typically fed to livestock. After adjusting for the 2.0x degree of exaggeration used in the processing study, the Agency determined that while the calculated residue was greater than the recommended tolerance for the raw agricultural commodity (sugarcane, cane), it was below the current tolerance level for sugarcane molasses and should be decreased to 4.0 ppm. Therefore, in 40 CFR 180.396(c) EPA is increasing the tolerance for combined hexazinone residues of concern in or on sugarcane, cane from 0.2 to 0.6 ppm and decreasing the tolerance in or on sugarcane molasses from 5.0 to 4.0 ppm, and revising sugarcane molasses to sugarcane, molasses. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

When EPA proposed to revoke the tolerances in 40 CFR 180.396 for fat of cattle, goats, hogs, horses, and sheep, and meat and meat byproducts of hogs, it did so based on available exaggerated feeding data from which the Agency determined that there is no reasonable expectation of finite hexazinone residues of concern in livestock from treated feed. However, because DuPont Crop Protection will submit new data later this year and information from the State of Florida may need to be considered by the Agency, EPA will not revoke these specific fat, meat, and meat byproduct tolerances at this time. When the information from the State of Florida and submitted data from DuPont Crop Protection have been reviewed, EPA will re-evaluate these tolerances under FFDCA. If data are not submitted in the near future or if data adequate to support a safety finding are lacking, EPA intends to revoke the tolerances on

cattle, fat; sheep, fat; hog, meat; and hog, meat byproducts in 40 CFR 180.396.

The TRED mentions the need for additional method validation of Method AMR 3783–6 for determining hexazinone (parent and metabolite) levels in milk and livestock tissues. The method has undergone successful independent validation and radiovalidation studies. Additional validation by EPA laboratories is not required. The method is considered adequate for enforcement purposes for residues of hexazinone (and metabolites) in milk and livestock tissues.

According to the TRED, the tolerance expression, which is currently expressed as hexazinone and its metabolites (calculated as hexazinone) in 40 CFR 180.396(a) for plant, animal, and milk commodities for general tolerances should be modified to include all the specific metabolites in plants, animal tissue and milk. Consequently, EPA is separating and recodifying plant, animal, and milk tolerances from 40 CFR 180.396(a) to (a)(1), (a)(2), and (a)(3), respectively. In the **Federal Register** proposal of June 7, 2006, the C-1 metabolite was inadvertently included in 40 CFR 180.396(a)(3).

After correction of the exaggerated feeding dose (62.5x) for cattle, goats, horses, and sheep, the Agency determined that residue levels of hexazinone and its metabolites ranged as high as 0.09 ppm (just below the sum of the LOQs or 0.1 ppm), and therefore meat and meat byproduct tolerances should be maintained in newly recodified 40 CFR 180.396(a)(2) at 0.1 ppm for cattle, goats, horses, and sheep.

In addition, after correction of the exaggerated feeding dose (62.5x) for cattle, the Agency determined that residue levels of hexazinone and its metabolites in whole milk ranged as high as 0.164 ppm. Based on the enforcement method, the sum of the combined LOQs for hexazinone and its metabolites, EPA is increasing the tolerance in the newly recodified 40 CFR 180.396(a)(3) for the combined hexazinone residues of concern in or on milk from 0.1 to 0.2 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Available data indicate combined residues of hexazinone and its regulated metabolites were <0.3 ppm in or on blueberries and <0.35 ppm in or on pineapples. Based on the combined LOQs (0.55 ppm) of the enforcement method for parent plus metabolites, EPA is increasing the tolerances in newly recodified 40 CFR 180.396(a)(1) for combined hexazinone residues of concern in or on blueberry from 0.2 to 0.6 ppm and pineapple (whole fruit) from 0.5 to 0.6 ppm, and revising pineapple (whole fruit) to pineapple. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that indicate combined residues of hexazinone and its regulated metabolites as high as 1.46 ppm in or on alfalfa seed, the Agency determined that a tolerance should be established at 2.0 ppm. Therefore, EPA is establishing a tolerance in newly recodified 40 CFR 180.396(a)(1) for combined hexazinone residues of concern in or on alfalfa, seed at 2.0 ppm.

In addition, EPA is revising commodity terminology in 40 CFR 180.396(a) to conform to current Agency practice as follows: alfalfa green forage to alfalfa, forage; grass, range and grass, pasture to grass, forage, and grass, hay.

2. *Glyphosate*.

• *Comment*. A comment was received from Monsanto Company generally agreeing with the proposed tolerance changes to glyphosate in 40 CFR 180.364. Monsanto also wanted to alert the Agency of the recent changes in the CODEX Maximum Residue Limits (MRLs) for glyphosate finalized by the CODEX Alimentarious Commission in July of 2006. Monsanto provided a detailed list of suggested changes to the U.S. tolerance regulation for glyphosate (concerning cereal, grains, cotton seed, meat byproducts, kiwifruit, and rapeseed) to achieve better alignment with the newly established CODEX MRLs. Monsanto did note two modifications that should be made in 40 CFR 180.364:

—To alphabetize the commodity cacao beans.

—Add the term ''except corn forage'' to the Crop group 16 forage, fodder, and straw tolerance to eliminate a conflict with the individual tolerance for ''corn, field, forage''.

• *Agency response*. The Agency appreciates the support of Monsanto and the alert concerning the changes in the CODEX MRLs. Since the CODEX MRLs were adopted during the comment period of the proposal, any tolerance modifications made in attempt to harmonize with CODEX will need to be proposed separately for comment. The Agency will address the CODEX harmonization in a future proposal and consider Monsanto's detailed recommendations for CODEX harmonization of tolerances for glyphosate at that time. Consequently, the Agency is not taking action on the tolerances in 40 CFR 180.364 on kiwifruit, and cattle and hog liver as proposed. EPA agrees with alphabetizing cacao bean and revising the crop group 16 to include the term ''except corn forage'' in 40 CFR 180.364.

EPA is revising commodity terminology in 40 CFR 180.364 to conform to current Agency practice as follows: Hop, dried cone to hop, dried cones; wheat, milling fractions, (except flour) to wheat, bran; wheat, middlings; and wheat, shorts; grain, cereal, stover and straw, group to grain, cereal, forage, fodder and straw, group 16, except corn forage; vegetable, bulb, group to vegetable, bulb, group 3; vegetable, foliage of legume except soybean, subgroup 7A to vegetable, foliage of legume, subgroup 7A, except soybean; vegetable, fruiting, group to vegetable, fruiting, group 8; vegetable, leafy, group to vegetable, leafy, group 4; and vegetable, leaves of root and tuber, group (except sugar beet tops) to vegetable, leaves of root and tuber, group 2, except sugar beet tops.

The RED recommended that alfalfa (fresh and hay), clover and other non-grass animal feeds be consolidated in the corresponding crop group ''animal feed, nongrass, group 18'' at 100 ppm. Since the RED was published, the ''animal feed, nongrass, group 18'' was established; however, due to changes in the use patterns and grazing intervals the corresponding tolerance level is 400 ppm. Also, the existing and conflicting tolerances for ''alfalfa, hay'' (400 ppm) and ''alfalfa, forage'' (175 ppm), respectively, should be removed since the existing tolerance on ''animal feed, nongrass, group 18'' (400 ppm) covers these animal feed items. This was originally proposed by the EPA June 18, 2003 (68 FR 36472) (FRL–7308–8). Therefore, EPA is removing the tolerances in 40 CFR 180.364 on alfalfa, forage at 175 ppm and alfalfa, hay at 400 ppm, because they are no longer needed and their commodity uses are covered by the existing group tolerance.

No comments were received by the Agency concerning the following.

3. *p-Chlorophenoxyacetic acid*. The Agency canceled the last registered use for *p*-chlorophenoxyacetic acid on tomato in May 1995. Therefore, the Agency is revoking the tolerance in 40 CFR 180.202(a)(1) for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol in or on tomato, removing paragraph (a)(1), and recodifying existing paragraph (a)(2) as paragraph (a).

Based on the available data that indicate combined residues of *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol in or on mung bean sprouts will not exceed 0.2 ppm, the Agency determined that the tolerance should be lowered to 0.2 ppm. Therefore, EPA is decreasing the tolerance for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol to inhibit embryonic root development in or on bean, mung, sprouts from 2.0 to 0.2 ppm in newly recodified 40 CFR 180.202(a).

4. *Difenzoquat.* Based on available field trial data that indicate residues of difenzoquat were non-detectable (<0.05 ppm) in or on barley grain, as high as 4.0 ppm in or on barley straw, and as high as 4.2 ppm in or on wheat straw, the Agency determined that these tolerances should be decreased to 0.05 ppm, 5.0 ppm, and 5.0 ppm, respectively. Therefore, EPA is decreasing the tolerance in 40 CFR 180.369 for residues of difenzoquat in or on barley, grain from 0.2 to 0.05 ppm; barley straw from 20.0 to 5.0 ppm; and wheat, straw from 20.0 to 5.0 ppm.

Processing data for wheat grain and aspirated grain fractions indicate that residues of difenzoquat concentrated 4–fold in wheat bran and 4.6–fold in shorts, and minimal concentration occurred in middlings. Residues did not concentrate in flour. The wheat processing data are also applicable to barley. Based on those concentration factors and the reassessed tolerance of 0.05 ppm for wheat grain, the Agency determined that tolerances for both wheat bran and shorts should be established at 0.25 ppm. Therefore, EPA is establishing tolerances in 40 CFR 180.369 at 0.25 ppm for residues of difenzoquat in or on wheat, bran and wheat, shorts. In addition, because the wheat processing data are translated to barley, EPA is establishing a tolerance in 40 CFR 180.369 for residues of difenzoquat in or on barley, bran at 0.25 ppm.

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

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FQPA. The safety finding determination is found in detail in each RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued TREDs for *p*-chlorophenoxyacetic acid, difenzoquat, and hexazinone. Glyphosate tolerances were reassessed post-FQPA as part of the Agency's determinations on April 11, 1997 (62 FR 17723) to establish new glyphosate uses and therefore a TRED to reassess its tolerances was not needed. All of these active ingredients had REDs which were completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6 (c)).

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that both:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA considers CODEX MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the CODEX Committee on Pesticide Residues, a committee within the CODEX Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with CODEX MRLs. EPA may establish a tolerance that is different from a CODEX MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the CODEX level. EPA's effort to harmonize with CODEX MRLs is summarized in

the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the Internet at *http://www.epa.gov*. On the EPA Home Page select ''Laws, Regulations & Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

In this final rule EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this final rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket for this final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 20, 2006.

James J. Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.202, paragraph (a) is revised to read as follows:

§ 180.202 *p*-Chlorophenoxyacetic acid; tolerances for residues.

(a) *General.* A tolerance is established for the combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol to inhibit embryonic root development in or on the following food commodity:

Commodity	Parts per million
Bean, mung, sprouts	0.2

* * * * *

■ 3. In § 180.364, the table in paragraph (a) is revised to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
Acerola	0.2
Alfalfa, seed	0.5
Almond, hulls	25
Aloe vera	0.5
Ambarella	0.2
Animal feed, nongrass, group 18	400
Artichoke, globe	0.2
Asparagus	0.5
Atemoya	0.2
Avocado	0.2
Bamboo, shoots	0.2
Banana	0.2
Barley, bran	30
Barley, grain	20
Beet, sugar, dried pulp	25
Beet, sugar, roots	10
Beet, sugar, tops	10
Berry, group 13	0.2
Betelnut	1.0
Biriba	0.2
Blimbe	0.2
Borage, seed	0.1
Breadfruit	0.2
Cacao bean	0.2
Cactus, fruit	0.5
Cactus, pads	0.5
Canistel	0.2
Canola, meal	15
Canola, seed	10
Cattle, kidney	4.0
Cattle, liver	0.5
Chaya	1.0
Cherimoya	0.2
Citrus, dried pulp	1.5
Coconut	0.1
Coffee, bean	1.0
Corn, field, forage	6.0
Corn, field, grain	1.0
Cotton, gin byproducts	175
Cotton, undelinted seed	35
Cranberry	0.2
Crambe, seed	0.1
Custard apple	0.2
Date	0.2
Dokudami	2.0
Durian	0.2
Egg	0.05
Epazote	1.3
Feijoa	0.2
Fig	0.2
Fish	0.25
Flax, meal	8.0
Flax, seed	4.0
Fruit, citrus, group 10	0.5
Fruit, pome, group 11	0.2
Fruit, stone, group 12	0.2
Galangal, root	0.2
Ginger, white, flower	0.2
Goat, kidney	4.0
Goat, liver	0.5
Gourd, buffalo, seed	0.1
Governor's plum	0.2
Gow kee, leaves	0.2
Grain, aspirated fractions	100
Grain, cereal, forage, fodder and straw, group 16, except corn forage	100
Grain, cereal, group 15, except barley, field corn, grain sorghum, oat and wheat	0.1
Grape	0.2
Grass, forage, fodder and hay, group 17	300
Guava	0.2
Herbs subgroup 19A	0.2
Hog, kidney	4.0
Hog, liver	0.5
Hop, dried cones	7.0
Horse, kidney	4.0
Horse, liver	0.5
Ilama	0.2
Imbe	0.2
Imbu	0.2
Jackfruit	0.2
Jaboticaba	0.2
Jojoba, seed	0.1
Juneberry	0.2
Kava, roots	0.2
Kenaf, forage	200
Kiwifruit	0.2
Lesquerella, seed	0.1
Leucaena, forage	200
Lingonberry	0.2
Longan	0.2
Lychee	0.2
Mamey apple	0.2
Mango	0.2
Mangosteen	0.2
Marmaladebox	0.2
Meadowfoam, seed	0.1
Mioga, flower	0.2
Mustard, seed	0.1
Nut, pine	1.0
Nut, tree, group 14	1.0
Oat, grain	20
Okra	0.5
Olive	0.2
Oregano, Mexican, leaves	2.0
Palm heart	0.2
Palm heart, leaves	0.2
Palm, oil	0.1
Papaya	0.2
Papaya, mountain	0.2
Passionfruit	0.2
Pawpaw	0.2
Peanut	0.1
Peanut, forage	0.5
Peanut, hay	0.5
Pepper leaf, fresh leaves	0.2
Peppermint, tops	200
Perilla, tops	1.8
Persimmon	0.2
Pineapple	0.1
Pistachio	1.0
Pomegranate	0.2
Poultry, meat	0.1
Poultry, meat byproducts	1.0
Pulasan	0.2
Quinoa, grain	5.0
Rambutan	0.2
Rapeseed, meal	15
Rapeseed, seed	10
Rose apple	0.2
Safflower, seed	0.1
Salal	0.2
Sapodilla	0.2
Sapote, black	0.2
Sapote, mamey	0.2
Sapote, white	0.2
Sesame, seed	0.1
Sheep, kidney	4.0
Sheep, liver	0.5
Shellfish	3.0
Sorghum, grain, grain	15
Soursop	0.2
Soybean, forage	100
Soybean, hay	200
Soybean, hulls	100
Soybean, seed	20
Spanish lime	0.2
Spearmint, tops	200
Spice subgroup 19B	7.0
Star apple	0.2
Starfruit	0.2
Stevia, dried leaves	1.0
Strawberry	0.2
Sugar apple	0.2
Sugarcane, cane	2.0
Sugarcane, molasses	30
Sunflower, seed	0.1
Surinam cherry	0.2
Tamarind	0.2
Tea, dried	1.0
Tea, instant	7.0
Teff, grain	5.0
Ti, leaves	0.2
Ti, roots	0.2
Ugli fruit	0.5
Vegetable, leafy, brassica, group 5	0.2
Vegetable, bulb, group 3	0.2
Vegetable, cucurbit, group 9	0.5
Vegetable, foliage of legume, subgroup 7A, except soybean	0.2
Vegetable, fruiting, group 8	0.1
Vegetable, leafy, group 4	0.2
Vegetable, leaves of root and tuber, group 2, except sugar beet tops	0.2

Commodity	Parts per million
Vegetable, legume, group 6, except soybean	5.0
Vegetable, root and tuber, group 1, except sugar beet	0.2
Wasabi, roots	0.2
Water spinach, tops	0.2
Watercress, upland	0.2
Wax jambu	0.2
Wheat, bran	20
Wheat, grain	5.0
Wheat, middlings	20
Wheat, shorts	20
Yacon, tuber	0.2

* * * * *

■ 4. Section 180.369 is revised as follows:

§ 180.369 Difenzoquat; tolerances for residues.

(a) *General*. Tolerances are established for residues of difenzoquat (1,2-dimethyl-3,5-diphenyl-1*H*-pyrazolium ion), derived from application of the methyl sulfate salt and calculated as the cation, in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, bran	0.25
Barley, grain	0.05
Barley, straw	5.0
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat byproducts	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Wheat, bran	0.25
Wheat, grain	0.05
Wheat, shorts	0.25
Wheat, straw	5.0

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

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

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

■ 5. In § 180.396, paragraphs (a) and (c) are revised to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) *General*. (1) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], D [3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione] (calculated as hexazinone) in the following commodities:

Commodity	Parts per million
Alfalfa, forage	2.0
Alfalfa, hay	8.0
Alfalfa, seed	2.0
Blueberry	0.6
Grass, forage	10.0
Pineapple	0.6

(2) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) and its animal tissue metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], and F (3-cyclohexyl-6-amino-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) (calculated as hexazinone) in the following food commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Goat, fat	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
Hog, fat	0.1
Hog, meat	0.1
Hog, meat byproducts	0.1
Horse, fat	0.1
Horse, meat	0.1
Horse, meat byproducts	0.1
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, meat byproducts	0.1

(3) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) and its metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], C-2 [3-(3-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione] and F (3-cyclohexyl-6-amino-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) (calculated as hexazinone) in milk:

Commodity	Parts per million
Milk	0.2

(c) *Tolerances with regional registrations*. Tolerances with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione], B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], D [(3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione] (calculated as hexazinone) in the following commodities:

Commodity	Parts per milliom
Sugarcane, cane	0.6
Sugarcane, molasses	4.0

[FR Doc. E6–15840 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2006–0255, EPA–HQ–SFUND–2006–0252, EPA–HQ–SFUND–2006–0247, EPA–HQ–SFUND–2006–0250, EPA–HQ–SFUND–2004–0012; FRL–8223–3]

RIN 2050–AD75

National Priorities List, Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is

intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund Section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 27, 2006.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the

Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as

explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

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

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS docket ID number
ASARCO Taylor Springs,	Taylor Springs, IL	EPA–HQ–SFUND–2006–0255.
Ringwood Mines/Landfill	Ringwood, NJ	EPA–HQ–SFUND–2006–0252.
Matteo & Sons, Inc	Thorofare, NJ	EPA–HQ–SFUND–2006–0247.
Pesticide Warehouse I	Arecibo, PR	EPA–HQ–SFUND–2004–0012.
Maunabo Area Ground Water Contamination	Maunabo, PR	EPA–HQ–SFUND–2006–0250.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566–1744.

The contact information for the Regional Dockets is as follows:

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see **FOR FURTHER INFORMATION CONTACT** above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following five sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
IL	ASARCO Taylor Springs	Taylor Springs.

State	Site name	City/county
NJ	Ringwood Mines/Landfill	Ringwood.
NJ	Matteo & Sons, Inc	Thorofare.
PR	Pesticide Warehouse I	Arecibo.
PR	Maunabo Area Ground Water Contamination	Maunabo.

B. Restore Site to NPL

Pursuant to CERCLA § 105(e) and 40 CFR 300.425(e)(3), whenever there has been a significant release of hazardous substances or pollutants or contaminants from a site that has been deleted from the NPL, EPA can restore the site to the NPL without application of the HRS.

EPA is restoring to the NPL the Ringwood Mines/Landfill site in Passaic, New Jersey. This action was proposed on April 19, 2006 (71 FR 20052). The Ringwood Mines/Landfill site was originally added to the NPL on September 1, 1983 and deleted from the NPL on November 2, 1994.

C. Site Name Change

The Maunabo Area Ground Water Contamination site in Maunabo, Puerto Rico, was proposed to the NPL under a different name. The former name was Maunabo Urbano Public Wells (see Proposed Rule at 71 FR 20052, April 19, 2006). EPA believes the new name, Maunabo Area Ground Water Contamination, more accurately identifies the site.

D. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responses to comments are below.

EPA received comments from Ford Motor Company regarding the restoration of the Ringwood Mines/Landfill site to the NPL. Ford Motor Company did not object to restoring the site to the NPL. Ford, however, did point out what they believed to be some inaccuracies in EPA's narrative summary. In response, EPA has updated the narrative summary to more accurately reflect the site's history and current conditions.

In addition, EPA received one comment related to the Maunabo Area Ground Water Contamination site from the Puerto Rico Industrial Development Company (PRIDCO). PRIDCO commented that, although it was not opposed to listing, it should not be considered a PRP for the site, and that the facilities located on PRIDCO property are not sources of the contamination. Further, PRIDCO was only an owner of the land and structures, not an operator of the industries located at the facilities.

In response, this comment has no effect on the score. The identification of PRPs is not part of an HRS evaluation or listing of a site. Listing does not reflect a judgment on the activities of site owners, nor does it assign liability (48 FR 40759, September 8, 1983).

EPA also received a comment that was not directed at any particular site. The comment suggested that this listing is inconsistent with the separation of powers doctrine and listing these sites should only be done by Congress. The Supreme Court has stated that ''when Congress confers decisionmaking authority upon agencies [it] must lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.'' *Whitman* v. *American Trucking Ass'ns, Inc.,* 531 U.S. 457, 472 (2001) (internal citation and punctuation omitted). The Court also noted that ''[i]n the history of the Court we have found the requisite 'intelligible principle' lacking in only two statutes, one of which provided literally no guidance for the exercise of discretion, and the other of which conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring 'fair competition.' '' *Id.* at 474. CERCLA section 105(a)(8)(A) provides several considerations for EPA when ''determining priorities among releases or threatened releases throughout the United States'' and listing decisions are based upon these considerations, under CERCLA section 105(a)(8)(B). Accordingly, EPA may properly make NPL listing determinations.

For the remainder of sites in this rule, EPA received no relevant comments, therefore, EPA is placing them on the NPL at this time. All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *www.regulations.gov.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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. This 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and

local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded Federal requirements imposed on State and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and

Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

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

Dated: September 20, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
IL	ASARCO Taylor Springs	Taylor Springs.	
*	*	*	*
NJ	Ringwood Mines/Landfill	Ringwood.	
*	*	*	*
NJ	Matteo & Sons, Inc.	Thorofare.	
*	*	*	*
PR	Pesticide Warehouse I	Arecibo.	
*	*	*	*
PR	Maunabo Area Ground Water Contamination	Maunabo.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be # 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be # 28.50)
P = Sites with partial deletion(s).

* * * * *

[FR Doc. E6–15858 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1759; MB Docket No. 05–9; RM–11141; RM–11242; MB Docket No. 05–10; RM–11140; RM–11241; RM–11279]

Radio Broadcasting Services; Albany, Arlington, Athena, Diamond Lake, and Eugene, Oregon, Goldendale, Washington, Hermiston, Ione, La Grande, Lebanon, Monument; Paisley, Prairie City, Prineville, and Sisters, The Dalles, and Tualatin, Oregon, Walla Walla, Washington and Weiser, Idaho

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In accordance with Section 1.420(j) of the Commission's Rules, this document grants a Settlement Agreement filed by Two Hearts Communications, LLC and SSR Communications, Inc., requesting the allotment of Channel 280C1 at Monument, Oregon, as its first local service and Channel 260C at Prairie City, Oregon, as its first local service. This document also substitutes Channel *247C1 for Channel *280C1 at Weiser, Idaho and allots Channel 267C1 at Prineville, Oregon, as its third FM commercial broadcast service. The reference coordinates for Channel 280C1 at Monument are 44–49–09 NL and 119–25–11 WL. The reference coordinates for Channel 260C at Prairie City are 44–17–47 NL and 118–44–22 WL. This site is located 18.5 kilometers (11.5 miles) south of Prairie City. The reference coordinates for Channel *247C1 at Weiser are 44–20–39 NL and 117–07–14 WL. This site is located 16 kilometers (9.9 miles) northwest of Weiser. The reference coordinates for Channel 267C1 at Prineville are 44–20–48 NL and 120–22–29 WL. This site is located 37.6 kilometers (23.4 miles) east of Prineville. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective October 20, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket Nos. 05–9 and 05–10, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Additionally, this document grants a counterproposal filed by Two Hearts Communications, LLC, by substituting Channel 264C2 for Channel 264C3 at Walla Walla, Washington, reallotting Channel 264C2 from Walla Walla, Washington to Athena, Oregon, as the community's first local service and modifying the Station KHSS license to reflect to this change. The reference coordinates for Channel 264C2 at Athena are 45–47–41 NL and 118–10–06 WL. This site is located 25.2 kilometers (15.7 miles) east of Athena. To accommodate the Athena reallotment, this document also substitutes Channel 261A for Channel 263A at Hermiston, Oregon and modifies the Station KQFM license accordingly; substitutes Channel 225C1 for Channel 260C1 at La Grande, Oregon and modifies the Station KWRL license accordingly; substitutes Channel 295C2 for vacant Channel 261C2 at Arlington, Oregon; and allots Channel 258A at Ione, Oregon, as its first local service. Channel 261A can be allotted to Hermiston at Station KQFM's current licensed site, 45–51–57 NL and 119–18–38 WL. This site is located 3.1 kilometers (1.9 miles) northwest of Hermiston. Channel 225C1 can be allotted to La Grande at Station KWRL's current licensed site, 45–12–59 NL and 118–00–00 WL. This site is located 14.3 kilometers (8.9 miles) southeast of La Grande. The reference coordinates for Channel 295C2 at Arlington are 45–33–52 NL and 120–19–00 WL. The site is located 19.9 kilometers (12.3 miles) southwest of Arlington. The reference coordinates for Channel 258A at Ione are 45–30–12 NL and 119–49–36 WL.

This document also dismisses the counterproposal jointly filed by Portland Broadcasting, L.L.C, licensee of Station KXPC–FM, Lebanon, Oregon, Columbia Gorge Broadcasters, Inc., licensee of Station KACI–FM, The Dalles, Oregon, M.S.W. Communications, LLC, licensee of Station KMSW(FM), The Dalles, Oregon, and Extra Mile Media, Inc., licensee of Station KHPE(FM), Albany, Oregon, requesting the substitution of Channel 250C2 for Channel 249C2 at The Dalles, Oregon, reallotment of Channel 250C2 from The Dalles to Tualatin, Oregon, as the community's first local service and modification of the Station KACI–FM license accordingly; substitution of Channel 300C for Channel 250C at Eugene, Oregon and modification of the Station KNRQ–FM license accordingly; substitution of Channel 279C for Channel 300C at Albany and modification of the Station KHPE license accordingly; substitution of Channel 251A for vacant Channel 299A at Diamond Lake, Oregon; reallotment of Channel 279C from Lebanon to Paisley, Oregon, as the community's first local service and a first local aural broadcast service to 2,287 persons, and modification of the Station KXPC–FM license accordingly; substitution of Channel 272C2 for Channel 224C3 at The Dalles, Oregon and modification of the FM Station KSMW license accordingly; and substitution of Channel 300C2 for Channel 272C2 at Goldendale, Washington and modification of the FM Station KYYT license accordingly.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel *280C1 and by adding Channel *247C1 at Weiser.

■ 3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 261C2 and by adding Channel 295C2 at Arlington; by adding Athena, Channel 264C2; by removing Channel 263A and by adding Channel 261A at Hermiston; by removing Channel 260C1 and by adding Channel 225C1 at La Grande; by adding Monument, Channel 280C1; by adding Prairie City, Channel 260C; and by adding Channel 267C1 at Prineville.

■ 4. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 264C3 at Walla Walla.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–8179 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D. 092106C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #8 – Adjustment of the Commercial Salmon Fishery from Horse Mountain to Point Arena, California

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

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the Fort Bragg subarea from Horse Mountain to Point Arena, CA, was modified by inseason action and was closed at 3 p.m. on Tuesday, September 5, 2006. This action was necessary to conform to the 2006 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures.

DATES: Closure effective 1500 hours local time (l.t.), September 5, 2006, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2006 annual management measures. Comments will be accepted through October 12, 2006.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail to *2006salmonIA8.nwr@noaa.gov* or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [060427113–6113–01 and/or I.D.092106C] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey, 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the commercial fishery in the Fort Bragg subarea from Horse Mountain to Point Arena, CA, would be open September 1 through the earlier of September 15 or a Chinook quota of 4,000; all salmon except coho; landing and possession limit of 30 Chinook per vessel per day; fish caught in the area must be landed in the area; Chinook minimum size limit 27 inches (68.6 cm) total length.

On September 5, 2006, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, California Department of Fish and Game and Oregon Department of Fish and Wildlife. Information related to catch to date, the Chinook catch rate, and effort data indicated that the quota had been exceeded. As a result, the State of California recommended, and the RA concurred, that the area from Horse Mountain to Point Arena, CA close effective at 3 p.m. Tuesday, September 5, 2006. All other restrictions that apply to this fishery remained in effect as announced in the 2006 annual management measures.

The RA determined that the best available information indicated that the catch and effort data supported the above inseason action recommended by the state. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time the action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery closure had to be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to modify the fishing schedule would have allowed the quota to be further exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also found good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–15871 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D. 092106B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #9 – Adjustment of the Commercial Salmon Fishery from Cape Falcon, Oregon to U.S.-Canada Border

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

ACTION: Modification of fishing season and quota; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Cape Falcon, OR to U.S.-Canada border was modified such that the season was open from Friday, September 8, 2006, through Friday, September 15, 2006, with a modified landing and possession limit for the open period of 160 Chinook and 80 marked coho. This action was necessary to conform to the 2006 management goals, with the intended effect of allowing the fishery to operate within the seasons and quotas specified in the 2006, annual management measures.

DATES: The modification of season and quota was effective 0001 hours local time (l.t.), September 8, 2006, through 2359 hours l.t., September 15, 2006, or until the Chinook or coho quotas were taken, which ever was earlier. After this time the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2006 annual management measures. Comments will be accepted through October 12, 2006.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376. Comments can also be submitted via e-mail to *2006salmonIA9.nwr@noaa.gov* or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [060427113–6113–01 and/or I.D. 092106B] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey, 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the commercial fisheries in the area from the U.S.-Canada Border to Cape Falcon, Oregon. The fishery was open July 15 through the earlier of September 15 or an 11,550–preseason Chinook guideline or a 6,800–marked coho quota; the Cape Flattery and Columbia Control Zones was closed; open Saturday through Tuesday July 15 through August 1; fishing was open for all salmon; landing and possession limit of 35 Chinook and 35 marked coho per vessel per 4–day open period; open August 5 through September 15; Saturday through Monday; all salmon except no chum retention north of Cape Alava, WA, in August and September; landing and possession limit of 30 Chinook and 40 marked coho per vessel per 3–day open period, gear restricted to 6 inch (15.24 cm) plugs or longer. Previous inseason actions had modified this area such that the fishery was open 4 days per week, Saturday through Tuesday, beginning August 19 with an 80 Chinook landing and possession limit, and the 6 inch (15.24 cm) plug gear restriction was eliminated.

On September 6, 2006, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. Information related to catch to date, the Chinook and coho catch rates, and effort data indicated that the catch was less than anticipated preseason and that provisions designed to slow the catch of Chinook could be modified. As a result, the State of Washington recommended, and the Regional Administrator concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR would be open from September 8 through September 15 with a landing and possession limit of 160 Chinook and 80 marked coho. All other restrictions that apply to this fishery remained in effect as announced in the 2006 annual management measures and previous inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data supported the above inseason action recommended by the state. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time the action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery closure had to be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to modify the fishing schedule would have allowed the quota to be further exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also found good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–15872 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D.092006D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #4 – Adjustments of the Recreational Fishery from U.S.-Canada Border, to Cape Falcon, Oregon

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announced that the recreational fishery from the U.S.-Canada Border, to Cape Falcon, OR was modified, effective Friday, August 11, 2006, in the following subareas: the La Push, Westport, and Columbia River Subarea's were open seven days per week, with a modified daily bag limit as follows: All salmon, two fish per day. The Neah Bay Subarea was open seven days per week with a modified daily bag limit as follows: All salmon, two fish per day, except no chum retention through September 17, 2006. All other restrictions remained in effect as announced for 2006 Ocean Salmon Fisheries. This action was necessary to conform to the 2006 management goals, and the intended effect was to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures.

DATES: The modification of fishing days and daily bag limit was effective 0001 hours local time (l.t.), Friday, August 11, 2006, in the La Push, Westport, and Neah Bay Subarea's until the Chinook quotas or coho quotas are taken, or 2359 hours l.t., September 17, 2005, whichever is earlier. Effective 0001 hours local time (l.t.), Friday, August 11, 2006, in the Columbia River Subarea until the Chinook quota or coho quota is taken, or 2359 hours l.t., September 30, 2006, whichever is earlier; after which the fisheries remained closed until opened through an additional inseason action for the west coast salmon fisheries, which would be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2006 annual management measures.

Comments will be accepted through October 12, 2006.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376. Comments can also be submitted via e-mail at the *2006salmonIA4.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include the docket number 060427113–6113–01 and/or I.D. 092006D] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey, 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) opened June 30 through the earlier of September 17 or a 7,058–marked coho subarea quota with a subarea guideline of 3,200 Chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) opened June 30 through the earlier of September 17 or a 1,889–marked coho subarea quota with a subarea guideline of 1,300 Chinook; the area from Queets River to Leadbetter Point, WA (Westport Subarea) opened July 3 through the earlier of September 17 or a 27,603–marked coho subarea quota with a subarea guideline of 18,100 Chinook; the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) opened July 3 through the earlier of September 30 or a 36,600 marked coho subarea quota with a subarea guideline of 8,300 Chinook. The Neah Bay and La Push Subareas were open Tuesday through Saturday, and the Westport and Columbia River Subareas were open Sunday through Thursday. All subareas were restricted to a Chinook minimum size limit of 24 inches (61.0 cm) total length. In addition, the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a Chinook, with all retained coho required to have a healed adipose fin clip, and the Neah Bay subarea had a no chum retention requirement from August 1 through September 17.

On July 24, 2006, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the Chinook and coho catch rates, and effort data indicated that the catch was less than anticipated preseason and that provisions designed to slow the catch of Chinook could be modified, by relaxing the bag limits and fishing days per calendar provisions. As a result, on July 24, 2006, the states recommended, and the RA concurred, that effective Friday, August 11, 2006, the La Push, Westport, and Columbia River Subarea's would be open seven days per week, with a modified daily bag limit as follows: All salmon, two fish per day. The RA also concurred that the Neah Bay Subarea would be open seven days per week with a modified daily bag limit as follows: All salmon, two fish per day, except no chum retention through September 17, 2006. All other restrictions remained in effect as announced for 2006 Ocean Salmon Fisheries. These actions were necessary to conform to the 2006 management goals, and the intended effect was to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures. Modification in recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

The Regional Administrator, (RA) determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory actions were given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of

these actions would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily maintaining two restrictions. These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: September 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–15870 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D. 092106E]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #3 – Adjustment of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified such that the fishery did not reopen on June 17, 2006, as scheduled and remained closed through Monday, June 26, 2006. The fishery then reopened on June 27 through midnight June 30, 2006, with a 20–Chinook per vessel possession and landing limit for the four day open period. On June 15, 2006, NMFS determined that available catch and effort data indicated that the quota of 22, 450 Chinook salmon for May and June would be exceeded unless modified by inseason action. This action was necessary to conform to the 2006 management goals.

DATES: Closure effective 2359 hours local time (l.t.), June 17, 2006, after which the fishery remained closed through Monday, June 26, 2006. The fishery then reopened as scheduled on Tuesday, June 27, 2006 through 2359 hours local time (l.t.) June 30, 2006. The fishery was then again closed until the effective date of the next scheduled open period announced in the 2006 annual management measures. Comments will be accepted through October 12, 2006.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2006salmonIA3.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [060427113–6113–01 and/or I.D. 092106E] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey, 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would open May 1 through earlier of June 30 or a 22,450 Chinook quota; open May 1–2 with a 75 Chinook per vessel landing and possession limit for the 2–day open period; beginning May 6, open Saturday through Tuesday with an 80–Chinook per vessel possession and landing limit for each 4–day open period. If sufficient quota remains to prosecute openings prior to the June 24–27 open period, the remaining quota would be provided for a June 27–30 open period with a per vessel land and possession limit to be determined inseason.

On June 15, 2006, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife. Information related to catch to date, the Chinook catch rate, and effort data indicated that there was insufficient Chinook remaining in the quota to allow for the fishery to continue as scheduled. As a result, the states recommended, and the Regional Administrator concurred, that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would not reopen as scheduled on June 17, and would remain closed through Monday, June 26, 2006. The fishery then reopened on June 27 through midnight June 30, 2006, with a 20–Chinook per vessel possession and landing limit for the four day open period. All other restrictions that apply to this fishery remained in effect as announced in the 2006 annual management measures.

This action was necessary to conform to the 2006 management goals, and the intended effect was to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time the action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the

quota. Because of the rate of harvest in this fishery, failure to modify the fishing schedule would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–15900 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 092106G]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Atka mackerel total allowable catch (TAC) in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 23, 2006, through 2400 hrs, A.l.t., December 31, 2006.

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

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

The 2006 Atka mackerel TAC in the Central Aleutian District of the BSAI is 37,000 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 Atka mackerel TAC in the Central Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 36,990 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel in the Central Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 21, 2006.

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

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

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

Dated: September 21, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–8285 Filed 9–22–06; 1:02 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 187
Wednesday, September 27, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150–AH96

Facility Change Process Involving Items Relied on for Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify a requirement pertaining to items relied on for safety (IROFS). This rulemaking corrects an inconsistency in the regulations pertaining to IROFS.

DATES: Comments on the proposed rule must be received on or before October 27, 2006.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH96) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233, e-mail, *ant@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on December 11, 2006. However, if the NRC receives significant adverse comments on the proposed rule by October 27, 2006, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 70

Hazardous materials transportation, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134,

110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.72, paragraph (c)(2) is revised to read as follows:

§ 70.72 Facility changes and change process.

* * * * *

(c) * * *

(2) Does not remove, without at least an equivalent replacement of the safety function, an item relied on for safety that is listed in the integrated safety analysis summary and is necessary for compliance with the performance requirements of § 70.61;

* * * * *

Dated at Rockville, Maryland, this 13th day of September, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06–8271 Filed 9–26–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25637; Directorate Identifier 2006–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain EADS SOCATA Model TBM 700 airplanes. This proposed AD would require you to inspect the pilot door locking stop-fittings for correct length and, if any incorrect length pilot door locking stop-fittings are found, replace them. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. We are proposing this AD to detect and replace incorrect length pilot door locking stop-fittings. This condition, if not corrected, could result in depressurization of the airplane.

DATES: We must receive comments on this proposed AD by October 27, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62 41 73 00; fax: 33 (0)5 62 41 76 54; or SOCATA AIRCRAFT, INC., North Perry Airport, 7501 South Airport Rd., Pembroke Pines, FL 33023; telephone: (954) 893–1400; fax: (954) 964–4141.

FOR FURTHER INFORMATION CONTACT: Gunnar Berg, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–25637; Directorate Identifier 2006–CE–43–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, notified FAA that an unsafe condition may exist on certain EADS SOCATA Model TBM 700 airplanes. The DGAC reports that the pilot door adjustment procedure was improperly done, and the pilot door locking stop-fittings may be of incorrect length. This condition, if not corrected, could result in depressurization of the airplane.

Relevant Service Information

We have reviewed EADS SOCATA Service Bulletin SB 70–131, ATA No. 53, dated July 2005.

The service information describes procedures for:

- Inspecting the pilot door locking stop-fittings for correct length and
- Replacing any incorrect length pilot door locking stop-fittings.

Foreign Airworthiness Authority Information

The DGAC classified this service bulletin as mandatory and issued French AD Number F–2005–134, dated August 03, 2005, to ensure the continued airworthiness of these airplanes in France. These EADS SOCATA Model TBM 700 airplanes are manufactured in France and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we have examined the DGAC's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would require you to inspect the pilot door locking stop-fittings for correct length and, if any incorrect length pilot door locking stop-fittings are found, replace them.

Differences Between This Proposed AD and the Service Information

The service information allows for unpressurized flight if any incorrect length pilot door locking-stop fittings are found. If parts have been ordered but are not available, the proposed AD would permit unpressurized flight for 90 days after the required inspection or until parts become available, whichever occurs first. In addition, a placard in view of the pilot would be installed prohibiting pressurized flight until the repairs are done. The service information does not have a compliance time for the repairs or a placard requirement if incorrect length pilot door locking stop-fittings are found. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 157 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection and repair:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4.5 work-hours × $80 per hour = $360	$15	$375	$58,875

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

EADS SOCATA: Docket No. FAA–2006–25637; Directorate Identifier 2006–CE–43–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by October 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model TBM 700 airplanes, serial numbers 126 through 322, that are certificated in any category.

Unsafe Condition

(d) This AD results from a pilot door adjustment procedure not being done properly. We are issuing this AD to detect and correct incorrect length pilot door locking stop-fittings. This condition, if not corrected, could result in depressurization of the airplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the pilot door locking stop-fittings for correct length	Within 30 days after the effective date of this AD, unless already done	Follow EADS SOCATA Service Bulletin SB 70–131, ATA No. 53, dated July 2005.
(2) If any incorrect length pilot door locking stop-fittings are found, replace them	Before further flight after the inspection by paragraph (e)(1) of this AD	Follow EADS SOCATA Service Bulletin SB 70–131, ATA No. 53, dated July 2005.

(f) If you have ordered parts and they are not available, then you may fly unpressurized until parts become available or for a period not to exceed 90 days after the inspection required in paragraph (e)(1) of this AD, whichever occurs first. You must also fabricate and install a placard as described below. Completing the action of paragraph (e)(2) of this AD terminates the placard requirement.

(1) Fabricate (using letters at least ⅛ inch in height) a warning placard which states ''This airplane is prohibited from pressurized flight.''

(2) Install the placard in full view of the pilot. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may install the placard as required in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gunnar Berg, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) This AD is related to French AD Number F–2005–134, dated August 3, 2005. To get copies of the service information referenced in this AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62 41 73 00; fax: 33 (0)5 62 41 76 54; or SOCATA AIRCRAFT, INC., North Perry Airport, 7501 South Airport Rd., Pembroke Pines, FL 33023; telephone: (954) 893–1400; fax: (954) 964–4141. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–25637; Directorate Identifier 2006–CE–43–AD.

Issued in Kansas City, Missouri, on September 20, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8277 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25810; Directorate Identifier 2006–CE–49–AD]

RIN 2120–AA64

Airworthiness Directives; PZL-Bielsko Model SZD–50–3 ''Puchacz'' Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 27, 2006.

ADDRESSES: You may send comments by any of the following methods:

- DOT Docket Web Site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Fax: (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: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–25810; Directorate Identifier 2006-CE–49-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the European Union (EU), has issued Emergency Airworthiness Directive EAD No: 2006–0243-E (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that the aircraft manufacturer has identified that a discrepancy between the design documentation and the Technical Service Manual has been identified. In 1981, a castellated nut with cotter pin was introduced to secure the rudder, replacing the self locking nut, through PZL Bielsko Bulletin No. BK 06/50 3/81. This change has not been introduced to the Technical Service Manual and use of a self locking nut, in accordance with the Manual, is still possible. This was probably the reason of rudder disconnection during flight which occurred recently.

If not corrected, loss of the nut could result and allow the rudder to slip out of its hinges, separate from the glider, and lead to loss of control.

The MCAI requires you to inspect and, if necessary, replace the Rudder Attachment parts in accordance with the instruction contained in the Allstar PZL Glider Sp. z o.o. Mandatory Bulletin No. BE 058/SZD 50 3/2006 ''PUCHACZ'', dated August 10, 2006. Concurrently, changes in the Technical Service Manual must be introduced in accordance with the referenced bulletin. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PZL-Bielsko has issued Allstar PZL Glider Sp. z o.o. Mandatory Bulletin No.

BE–058/SZD–50–3/2006 ''PUCHACZ'', dated August 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 1.5 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $976 or $122 per product.

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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

PZL-Bielsko: FAA–2006–25810; Directorate Identifier 2006–CE–49–AD

Comments Due Date

(a) We must receive comments by October 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PZL-Bielsko Model SZD–50–3 ''Puchacz'' gliders, all serial numbers, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that the aircraft manufacturer has identified that a discrepancy between the design documentation and the Technical Service Manual has been identified. In 1981, a castellated nut with cotter pin was introduced to secure the rudder, replacing the self locking nut, through PZL Biesko Bulletin No. BK 06/50 3/81. This change has not been introduced to the Technical Service Manual and use of a self locking nut, in accordance with the Manual, is still possible. This was probably the reason of rudder disconnection during flight which occurred recently. If not corrected, loss of the nut could result and allow the rudder to slip out of its hinges, separate from the glider, and lead to loss of control.

Actions and Compliance

(e) Unless already done, do the following actions except as stated in paragraph (f) below: Within 30 days of the effective date of this AD or before further flight, whichever occurs later, inspect and, if necessary, replace the Rudder Attachment parts in accordance with the instruction contained in Allstar PZL Glider Sp. z o.o. Mandatory Bulletin No. BE 058/SZD 50 3/2006 ''PUCHACZ'', dated August 10, 2006. Concurrently, changes in the Technical Service Manual must be introduced in accordance with the referenced Bulletin.

FAA AD Differences

(f) None

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Gregory Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Return to Airworthiness:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated

agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) This AD is related to EASA EAD No: 2006–0243–E, which references Allstar PZL Glider Sp. z o.o. Mandatory Bulletin No. BE–058/SZD–50–3/2006 ''PUCHACZ'', dated August 10, 2006.

Issued in Kansas City, Missouri, on September 20, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–15905 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Infant Cushions/Pillows; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Under the Commission's regulations, any infant cushion/pillow that meets the criteria set forth in the Commission's regulations at 16 CFR 1500.18(a)(16)(i), is currently a banned hazardous substance. In July 2005, the Commission received a petition from Boston Billows, Inc. asking the Commission to amend 16 CFR 1500.18(a)(16)(i)(A)–(E) to provide an exception to the ban when the product is specifically designed, intended and promoted for mothers to use when breastfeeding and requested by a Pediatrician or a Board Certified Lactation Consultant. On July 10, 2006, the Commission voted to grant the petition to the extent it requests the Commission to commence a rulemaking process to evaluate whether the Boston Billow nursing pillow and other infant cushions/pillows or pillow-like products [1] could result in an amendment to the existing ban. Accordingly, this advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding that could result in an amendment to the existing ban on infant cushions/pillows. This proceeding is commenced under the Federal Hazardous Substances Act (FHSA).

By this notice, the Commission solicits written comments from interested persons concerning, in general, the risk of injury associated with infant cushions/pillows or pillow-like products. The Commission requests written comments on the regulatory alternatives discussed in this notice and other possible ways to address these risks. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury identified in the notice.

DATES: Written comments and submissions in response to this notice must be received by November 27, 2006.

ADDRESSES: Comments should be submitted to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127. Comments should be captioned ''Infant Cushions/Pillows ANPR.''

FOR FURTHER INFORMATION CONTACT: Suad Wanna-Nakamura, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7252; e-mail *snakamura@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Between 1985 and 1992, there were 35 infant deaths associated with the use of infant cushions/pillows (also known, among other names, as ''baby beanbag pillows'' and ''beanbag cushions''). The Commission initiated a rulemaking proceeding to determine whether a ban was necessary to address the unreasonable risks of injury and deaths associated with these types of infant cushions/pillows. 55 FR 42202. Due to the number of infant deaths associated with these products, the Commission proposed a rule to ban infant cushions/pillows with certain characteristics. 56 FR 32352. On June 23, 1992, the Commission issued a rule codified under 16 CFR 1500.18(a)(16)(i), banning infant cushions/pillows that: (1) Have a flexible fabric covering; (2) are loosely filled with a granular material, including but not limited to, polystyrene beads or pellets; (3) are easily flattened; (4) are capable of conforming to the body or face of an infant; and (5) are intended or promoted for use by children under one year of age. 57 FR 27912.

On July 17, 2005, Boston Billows submitted a petition requesting an amendment to 16 CFR 1500.18(a)(16)(i)(A)–(E) to allow an exception to the ban when the product is specifically designed, intended and promoted for mothers to use when breastfeeding and requested by a Pediatrician or a Board Certified Lactation Consultant. The petitioner is the manufacturer of the Boston Billow nursing pillow, which is purportedly designed and promoted to aid mothers when breastfeeding.

The Commission published a notice in the **Federal Register** on October 13, 2005, requesting comments on the petition. 70 FR 59726. The Commission received a total of 5 comments on the petition. The Commission staff reviewed the petition, the comments, and available information and prepared a briefing package for the Commission (available at *http://www.cpsc.gov*). On July 10, 2006, the Commission voted 3–0 to grant the petition to commence an ANPR.

B. The Product

There has been a proliferation of infant cushions/pillows or pillow-like products in the marketplace in all different shapes and sizes that meet some or all of the criteria set forth in the ban. For example, an infant cushion may have a flexible fabric covering, which conforms to the body or face of an infant, and is used by a child under one year of age, but contains a filling that is made of cotton or polyfill, instead of being filled with a granular material, such as polystyrene beads or pellets. The Commission believes that an examination of these different types of infant cushions/pillows or pillow-like products may now be warranted, given the proliferation of these products in the marketplace and their varying characteristics, including sizes, shapes and uses.

C. The Risk of Injury

Between 1985 and 1992, there were 35 infant deaths associated with the use of infant cushions/pillows. The Commission is unaware of any deaths or injuries associated with infant cushions/pillows since the ban on infant cushions and pillows went into effect in 1992. At the time of the ban, the recommendation from pediatricians was to place infants to sleep in the prone position (on the

[1] The term ''infant cushions/pillows or pillow-like products'' used throughout this ANPR means infant cushions/pillows or pillow-like products intended for use by infants less than one year of age, including, but not limited to, nursing pillows, infant beanbag seats or carriers, infant sleep aid pillows or similar products.

stomach). In all infant cushion/pillow related deaths where the position could be ascertained, the infant was in the prone position. The prone position was likely a major contributing factor to the suffocation and death of the infant.

Since the ban and following considerable evidence that sleeping in the prone position is a significant risk factor in sudden infant death syndrome (SIDS) incidents, a nationwide education campaign was launched in the United States recommending that infants be placed on their backs when put to sleep (Back to Sleep campaign). Since the launch of the Back to Sleep campaign there has been a dramatic drop in the number of SIDS incidents in the United States. The guidance provided by the campaign may make it less likely that infants will be placed on their stomachs to sleep, reducing the likelihood of suffocation. The Commission staff continues to believe that infant beanbag cushions, and similar infant cushions/pillows (including the Boston Billow nursing pillow) pose suffocation risks to infants if infants are placed in the prone position on them for sleeping. The same risk is not likely to be posed when infants are placed in the supine position. Accordingly, the Commission believes that the current regulation should be reexamined to evaluate the likely use patterns of these products, and any associated risk of injury.

D. Relevant Statutory Provisions

The petition was docketed under the FHSA, 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines ''hazardous substance'' to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if ''in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness.'' 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a ''banned hazardous substance.'' 15 U.S.C. 1261(q)(1)(A). Currently, the Commission bans any article known as an infant cushion or infant pillow which contains a flexible fabric covering, is loosely filled with granular material (including but not limited to, polystyrene beads or pellets), is easily flattened, is capable of conforming to the body or face of an infant and is intended or promoted for use by children under one year of age. 16 CFR 1500.18(a)(16)(i).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding is commenced by issuance of this ANPR. After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

E. Regulatory Alternatives

One or more of the following alternatives could be used to address the issues identified with infant cushions/pillows and pillow-like products.

1. *Amend regulation to allow exemption for certain infant cushions/pillows and pillow-like products.* The Commission could issue a rule amending the existing ban to exempt certain infant cushions/pillows and pillow-like products, such as the Boston Billows product, which currently fall within the scope of the ban, if the Commission finds that such products do not present an unreasonable risk of injury. If an exemption is granted, the Commission could still consider a labeling requirement if it found that such warnings were necessary to adequately protect children from hazards associated with infant cushions/pillows and pillow-like products.

2. *Amend regulation to delete, revise or add criteria to the ban.* The Commission could issue a rule amending the existing ban by deleting, revising or adding criteria, as the Commission found necessary to adequately address any risk of injury associated with infant cushions/pillows and pillow-like products used for sleeping. Thus, the Commission could either expand or narrow the ban to treat products of similar risk consistently.

3. *Leave existing regulation unchanged.* The Commission could leave the existing ban on infant cushions/pillows unchanged if the Commission finds that the existing banning criteria adequately address the risk of injury associated with infant cushions/pillows and pillow-like products.

4. *Repeal existing regulation.* The Commission could repeal the existing ban on infant cushions/pillows if the Commission finds that the currently banned infant cushions/pillows and pillow-like products no longer present an unreasonable risk of injury. If the existing regulation is repealed, the Commission has authority under section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis. In addition, if the ban is repealed, the Commission could still consider a labeling requirement if it found that such warnings were necessary to adequately protect children from hazards associated with infant cushions/pillows and pillow-like products.

F. Solicitation of Information and Comments

This ANPR is the first step in a proceeding which could result in an amendment of the current ban on infant cushions/pillows. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, the Commission solicits the following additional information on infant cushions/pillows or pillow-like products intended for use by infants less than one year of age, including, but not limited to, nursing pillows, infant beanbag seats or carriers, infant wedges, infant sleep aid pillows, or similar products:

1. The models and model numbers of infant cushions/pillows and pillow-like products and the annual sales figures for each model from the time such product was made available in the marketplace;

2. The names and addresses of manufacturers and distributors who make and sell infant cushions/pillows and pillow-like products;

3. Information on any children believed to have been injured or killed as a result of infant cushions/pillows and pillow-like products;

4. The circumstances under which these injuries and deaths occur, including the ages of the victims;

5. The current regulation lists five criteria that define a banned infant cushion/pillow. Should any of these criteria be revised? Should any of these criteria be deleted? Are there criteria not in the current ban that should be added?

6. Whether the risk of injuries and deaths could be reasonably reduced by (a) Limiting sale of infant cushions/pillows to certain healthcare products firms or medical professionals, (b) restricting a consumer's purchase of an infant cushion/pillow to consumers with a medical professional's written recommendation or prescription, and (c)

whether any such point-of-sale restriction would be practical or effective;

7. Other information on the potential costs and benefits of the regulatory options;

8. The likelihood and nature of any significant economic impact of a rule on small entities;

9. The basis for, and costs and benefits of, mandating a labeling or instructions requirement.

Also, in accordance with section 3(f) of the FHSA, the Commission requests:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation;

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan to do so.

Comments and other submissions should be captioned ''Infant Cushions/Pillows ANPR'' and e-mailed to *cpsc-os@cpsc.gov* or mailed or delivered, preferably in five copies, to the Office of the Secretary at Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814. Comments and other submissions may also be filed by facsimile to (301) 504–0127. All comments and other submissions must be received by November 27, 2006.

Dated: September 21, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 06–8265 Filed 9–26–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2006–25767; formerly CGD09–06–123]

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings.

SUMMARY: This document provides the times and locations of the public meetings which will be held by the Coast Guard to discuss issues relating to the proposed permanent safety zones located in the Great Lakes to conduct live gunnery training exercises. The meetings will be open to the public.

DATES: The Coast Guard will hold four public meetings as follows: Monday, October 16, 2006 in Duluth MN; Wednesday October 18, 2006 in Grand Haven/Spring Lake, MI; Thursday, October 19, 2006 in Port Huron/Marysville, MI; Monday, October 23, 2006 in Cleveland, OH. The public meetings at each location will be held from 5:30 p.m. to 8 p.m. (local), with an open house prior to the start of the public meeting beginning at 4 p.m. (local).

Comments and material related to the public meetings must reach the Docket Management Facility on or before October 6, 2006. If you are unable to attend, you may submit comments to the Docket Management Facility at the address under **ADDRESSES** by November 13, 2006.

ADDRESSES: The Coast Guard will hold the public meetings at the following addresses:

1. Duluth, MN: Duluth Convention Center, 350 Harbor Drive, Duluth, MN 55802, telephone (218) 722–5573.

2. Grand Haven/Spring Lake, MI: Grand Haven Waterfront Holiday Inn, 940 West Savidge, Spring Lake, MI 49456, telephone (616) 846–1000.

3. Port Huron/Marysville, MI: Crystal Gardens, 1200 Gratiot Boulevard, Marysville, MI, 48080, telephone, (810) 364–6650.

4. Cleveland OH: Anthony J. Celebrezze Federal Building, 31st floor auditorium, 1240 E 9th Street, Cleveland, OH 44199, telephone (216) 902–6020; photo identification required for entrance.

You may also submit your comments and related material by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2006–2567), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for the rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket by performing a ''Simple Search'' for docket number 25767 on the internet at *http://dms.dot.gov.*

Electronic forms of all comments received into any of our dockets can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor unit, etc.) and is open to the public without restriction. You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice and the public meeting, contact Commander Gustav Wulfkuhle, Chief Enforcement Branch, Ninth Coast Guard District, Cleveland, Ohio at (216) 902–6091. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name and address and identify the docket number (USCG–2006–25767). You may submit your comments and material by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address under **ADDRESSES**.

Regulatory History

On August 1, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM) (71 FR 43402) to establish permanent safety zones throughout the Great Lakes, which would restrict vessels from portions of the Great Lakes during live fire gun exercises that will be conducted by Coast Guard cutters and small boats. The initial comment period for this NPRM ended on August 31, 2006. In response to public requests, the Coast Guard re-opened the comment period on this NPRM. (71 FR 53629, September 12, 2006) Re-opening the comment period from September 12, 2006 to November 13, 2006, provides the public more time to submit comments and recommendations. On September 19, 2006, the Coast Guard published a brief

document announcing the dates of public meetings and indicating that more detailed information related to the meetings would be published at a later date (71 FR 54792). This document provides detailed information regarding the actual location of the public meetings and topics to be discussed.

Background and Purpose

The thirty-four permanent safety zones proposed in the NPRM will be located throughout the Great Lakes in order to accommodate the training needs of 57 separate Coast Guard units. The proposed safety zones are all located more than three nautical miles from the shoreline. Establishing permanent training areas serves to notify the public and solicit its input on selection of the training locations.

The proposed safety zones will be enforced only when training is conducted, and then only after notice by the Captain of the Port for the area in which the exercise will be held. The Captain of the Port will use all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the **Federal Register** if practicable, in accordance with 33 CFR 65.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The appropriate Captain of the Port will also issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of a live fire exercise safety zone is suspended.

Interested individuals are encouraged to attend the open house forums and public meetings, provide comments and ask questions about the weapons training areas.

Meeting Times and Topics

The meetings are expected to run from 5:30 p.m. to 8 p.m. (local). We may end the meetings early if there are no additional comments or questions. Topics to be covered during the public meetings include the following:

(1) Introduction of the proposed zones and the need to train on the Great Lakes;

(2) How the Coast Guard determined the locations of the zones;

(3) Scheduling and frequency of training in the zones;

(4) Notification procedures;

(5) Safety procedures;

(6) Weapons and munitions; and

(7) Environmental risk assessment overview.

Before the start of the formal public meetings, from 4 p.m. to 5:30 p.m. (local), the Coast Guard is hosting an open house so that the public can speak with Coast Guard personnel and obtain more information on the proposed zones.

Procedure

Each open house and meeting is open to the public. Ideally, comments will provide specific information and facts related to the impact of the zone(s) on the commenter. Detailed and focused comments will enable the Coast Guard to address identified areas of concern in the rulemaking process. Please note that the meeting may close early if all business is finished. If you are unable to attend, you may submit comments to the Docket Management Facility at the address under **ADDRESSES** by November 13, 2006.

Information on Services for Individuals With Disabilities

If you plan to attend any of the public meetings and require special assistance, such as sign language interpretation or other reasonable accommodations, please contact us as indicated in **FOR FURTHER INFORMATION CONTACT**. Requests for special assistance should reach the Coast Guard within 7 business days of the meeting you plan to attend.

Dated: September 21, 2006.

John E. Crowley, Jr.,

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

[FR Doc. E6–15890 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU92

Subsistence Management Regulations for Public Lands in Alaska; Kenai Peninsula Subsistence Resource Region

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the Federal Subsistence Board, are extending the comment period through November 9, 2006, on the proposed rule that would amend the regulations governing subsistence use of fish and wildlife in Alaska by creating an additional subsistence resource region for the Kenai Peninsula.

DATES: The comments period on the proposed rule is extended through November 9, 2006.

ADDRESSES: You may submit comments electronically to *Subsistence@fws.gov* or via the Federal E-Rulemaking Portal at *http://www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing. You may also submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: For general subsistence management program questions, contact Pete Probasco at (907) 786–3888. For Forest Service questions, contact Steve Kessler, Regional Subsistence Program Leader, USDA–FS Alaska Region, at (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *'' As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision,

the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114).

Federal Subsistence Regional Advisory Councils

Pursuant to the Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for residents of the regions, who have personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Comments and Extension of Comment Period on the Proposed Rule

The Kenai Peninsula has unique fish and wildlife management challenges due to intense use of the Peninsula's fish and wildlife by local and nonlocal residents and by nonresidents, and due to the recent Board actions to begin to provide a meaningful subsistence priority for fisheries in Federally managed fresh waters on the Kenai Peninsula. Kenai Peninsula lands primarily under Federal management include the Chugach National Forest and the Kenai National Wildlife Refuge.

On August 14, 2006, the Board published a proposed rule (71 FR 46427) related to the establishment of a new Kenai Peninsula Subsistence Resource Region. During a Southcentral Federal Subsistence Regional Advisory Council meeting held in Anchorage, Alaska on August 24, 2006, we heard significant testimony regarding the creation of a new Kenai Peninsula Subsistence Resource Region. Additionally, the Southcentral Regional Council unanimously recommended against the formation of such a region without providing more opportunity for public input. Letters from the public also strongly recommended providing more opportunity for public input. Therefore, the comment period on that proposed rule is extended through November 9, 2006. Prior to that date, the Board will hold public meetings on the Kenai Peninsula to receive testimony and discuss the proposed Kenai Peninsula Subsistence Resource Region. The specific time and place will be noticed in local and regional newspapers and by press release. You may submit electronic comments (preferred method) as a PDF or MS Word file, avoiding the use of any special characters and any form of encryption.

Dated: September 19, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: September 19, 2006.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 06–8280 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0087; FRL–8223–5]

RIN–2060–AM24

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to list four substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable subject to use conditions under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs and find them acceptable where they do not pose a greater overall risk to human health and the environment than other acceptable substitutes.

DATES: Comments must be received in writing by October 27, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0087 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* OAR Docket and Information Center, U.S. Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. To expedite review, a second copy of the comments should be sent to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT**.
- *Hand Delivery:* Air and Radiation Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0087. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9749; fax number: (202) 343–2363; e-mail address: *maranion.bella@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, EPA is taking this action as a direct final rule without prior proposal because EPA views this as a non-controversial revision and anticipates no adverse comments. A rationale for this action is set forth in the preamble to the direct final rule.

If we receive no adverse comments and no requests for public hearings in response to this action, we will take no further activity in relation to this rule. If EPA receives adverse comments or a request for public hearing, we will withdraw this direct final action as it applies to the substitute or substitutes on which the Agency has received adverse comment and will consider and respond to any comments prior to taking any new, final action for the substitute or substitutes. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. Any parties interested in commenting on this action should do so at that this time.

I. EPA Proposal

EPA would add four fire suppression agents to the list of acceptable substitutes subject to use conditions. The regulations implementing the SNAP program are codified at 40 CFR Part 82, Subpart G. The appendices to Subpart G list substitutes for ODSs that are unacceptable or that have restrictions imposed on their use. Today's action will add the four halon substitutes acceptable subject to use conditions to the appendices to Subpart G.

The direct final rule will be effective on November 27, 2006 without further notice unless we receive adverse comment (or a request for a public hearing) by October 27, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR Part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked ''Public'' to be filed in the public docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only.

II. Administrative Requirements

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* that are not already approved by the OMB. OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350. The EPA ICR Numbers are 1596.06 and 1774.03.

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. Include the ICR and/or OMB number in any correspondence.

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. This 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.

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 are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action

will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Today's action effectively supports the introduction of four new alternatives to the fire protection extinguishing systems market thus providing additional options for users making the transition away from ozone-depleting halons.

Use of halon 1301 total flooding systems have historically been in specialty fire protection applications including essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. Thus, EPA is providing more options to any entity, including small entities, by finding these substitutes acceptable for use. The use restrictions imposed on the substitutes in today's rule are consistent with the applications suggested by the submitters. Thus far, these alternatives have not been sold or used in the end uses not found acceptable under today's rule. Until a manufacturer or other party requests a SNAP review for such end uses, these products may not be sold for such end uses. Therefore, we conclude that the rule does not impose a new cost on businesses.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule will provide additional options for fire protection

subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not economically significant as defined in Executive Order 12866, and the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this proposed rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry related to choices of alternative fire suppression systems to support the transition away from ozone-depleting substances, but little if any impact related to energy. Thus, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. EPA is not requiring that specific technical standards be met in these regulations. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the latest edition of NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems which provides for exposure guidelines and safe use of halocarbon and inert gas agents used to extinguish fires. EPA also refers to the latest edition of NFPA 2010 Standard on Aerosol Extinguishing Systems, 2005 edition, which provides for safe use of aerosol extinguishing agents and technologies. Copies of these standards may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555. The NFPA 2001 and 2010 standards meet the objectives of the rule by setting scientifically-based guidelines for safe exposure to halocarbon and inert gas agents and aerosol extinguishing agents, respectively. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 21, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–15842 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0586; FRL–8089–5]

Propanil, Phenmedipham, Triallate, and MCPA; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for herbicides propanil, triallate, and MCPA. Also, EPA is proposing to modify certain tolerances for the herbicides propanil, phenmedipham, triallate, and MCPA. In addition, EPA is proposing to establish tolerances for the herbicides propanil, phenmedipham, triallate, and MCPA.

DATES: Comments must be received on or before November 27, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0586, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0586. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not

know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 3057–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7805P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of the herbicides propanil, phenmedipham, triallate, and MCPA in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Food Quality Protection Act (FQPA). The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each

Reregistration Eligibility Decision (RED) and Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredients. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 452427–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or (703) 605–6000; internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on propanil, phenmedipham, triallate, and MCPA at the internet at *http://www.epa.gov/pesticides/reregistration/status.htm* and in public dockets EPA–HQ–OPP–2003–0348 and EPA–HQ–OPP–2002–0033 (propanil); EPA–HQ–OPP–2004–0384 (phenmedipham); and EPA–HQ–OPP–2004–0156 and EPA–HQ–OPP–2004–0239 (MCPA) at *http://www.regulations.gov.*

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that (1) lawful use (sometimes through a label change) may result in a higher residue level on the commodity and (2) the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on Risk management, Reregistration, and Tolerance Reassessment typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies are available in the public docket for this proposed rule, while electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov*. You may search for docket ID number EPA–HQ–OPP–006–0586, then click on that docket ID number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

With respect to the tolerances that are proposed in this document to be modified, unless technical (e.g., commodity tolerance nomenclature revision), EPA has found that these tolerances are safe in accordance with FFDCA section 408(b)(2)(A), and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). These findings are discussed in detail in each RED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION.**

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Propanil.* Currently, in 40 CFR 180.274 (a)(1) and (2), tolerances are established for the combined residues of propanil and its metabolites (calculated as propanil) in or on both raw agricultural commodities (RACs) and processed foods and feeds. EPA is proposing to revise the tolerance expression to specify the residues of concern and combine the RACs and processed foods and feed tolerances in accordance with FFDCA 408 as amended by FQPA (1996) in 40 CFR 180.274(a) to read as follows: Tolerances are established for the combined residues of the herbicide propanil (3′, 4′-dichloropropionanilide) and its metabolites convertible to 3, 4-dichloroaniline (3, 4-DCA).

Tolerances currently exist for rice milling fractions and rice polishings. Rice milling fractions are no longer considered a significant animal feed item as delineated in ''Table 1.—Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at *http://www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series*. Therefore, EPA is proposing to remove the tolerances in 40 CFR 180.274(a) for the combined residues of propanil in or on rice milling fractions and rice, polishings at 10 parts per million (ppm).

The registered uses on barley, oat, and wheat (small grains) have been voluntarily cancelled (68 FR 68901, December 10, 2003) (FRL–7332–5), (68 FR 38328, June 27, 2003) (FRL–7310–6). In the absence of registered uses, the tolerances associated with the small grains should be revoked. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.274(a) for the combined propanil residues of concern in or on barley, straw; oat, straw; and wheat, straw at 0.75 ppm; barley, grain at .2 ppm; oat, grain at .2 ppm; wheat, grain at 0.2 ppm.

Two studies depicting the magnitude of regulated propanil residues in or on rice, grain exceeded the established tolerance of 2 ppm in or on treated rice, grain samples demonstrating residues ranging from 0.03 ppm to 8.7 ppm. Based on these data, EPA determined the tolerance should be 10 ppm on rice, grain. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.274(a) for the combined propanil residues of concern in or on rice, grain from 2 ppm to 10 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from

aggregate exposure to the pesticide chemical residue.

A rice processing study showed no concentration of residues in polished rice and average concentration factors of 3.5x for rice, hulls and 4.6x for rice, bran. The highest average field trial (HAFT) propanil residues found in rice were 8.7 ppm. Based on this HAFT and the observed concentration factors, the maximum expected residues are 30.45 ppm in or on rice, hulls (8.7 x 3.5) and 40.02 ppm in or on rice, bran (8.7 x 4.6). These expected residues are higher in the processed commodities than the reassessed tolerance of 10 ppm for rice, grain. Based on these data, EPA has determined that the tolerances should be 30 ppm on rice, hulls and 40 ppm on rice, bran. Therefore, EPA is proposing to increase tolerances in 40 CFR 180.274(a) for the combined propanil residues of concern in or on rice, hulls from 10 to 30 ppm and rice, bran from 10 to 40 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The potential for secondary transfer of propanil residues to animal commodities exists because the herbicide is registered for use on rice, which may be used as animal feed. Based on a maximum theoretical dietary burden (x) and using the residues levels found in dairy cattle and milk fed 15 ppm (0.75x) resulted in residues of: 0.035 ppm in milk, 0.31 ppm in liver, 0.77 ppm in kidney, < 0.05 ppm (non-detectable) in muscle, and 0.10 ppm in fat. Based on these data, the Agency determined the tolerances should be 0.05 ppm in cattle, meat; goat, meat; hog, meat; horse, meat; and sheep, meat; and 1.0 ppm in cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep,meat byproducts. In addition, the term ''negligible residue'' and its designation, ''(N)'' associated with the milk and animal tissue tolerances is being removed to conform to current Agency policy and practice. Therefore, EPA is proposing in 40 CFR 180.274(a) for the combined propanil residues of concern to maintain and revise the tolerances in or on milk from 0.05(N) ppm to 0.05 ppm and cattle, fat; goat, fat; hog, fat; horse, fat; and sheep, fat from 0.1(N) ppm to 0.10 ppm; to decrease and revise the tolerances in or on cattle, meat; goat, meat; hog, meat; horse, meat; and sheep, meat from 0.1(N) to 0.05 ppm; and to increase and revise the tolerances in or on cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep,meat byproducts from 0.1(N) to 1.0 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Maximum propanil residues were 0.212 ppm and 0.372 ppm, respectively, in eggs from hens dosed with propanil 15 ppm (0.9x), and 50 ppm (3.1x). Residues in liver from hens in the 15 ppm (0.9x), and 50 ppm (3.1x) dose groups were 0.183–0.236, and 0.824–1.755 ppm, respectively. Residues in muscle were < 0.050–0.076 and 0.087–0.161 ppm from the 0.9x and 3.1x dose groups, respectively. In fat, propanil residues of concern were < 0.05 ppm (< non-detectable) up to 0.9x feeding levels, and < 0.139–0.348 ppm at 3.1x. Based on these data, the Agency has determined that the propanil tolerances should be 0.30 ppm for egg; 0.05 ppm for poultry, fat; 0.50 ppm for poultry, meat byproducts; and 0.10 ppm for poultry, meat. In addition, the term ''negligible residue'' and its designation, ''(N)'' associated with the egg and animal tissue tolerances is being removed to conform to current Agency policy and practice. Therefore, EPA is proposing in 40 CFR 180.274(a) for the combined propanil residues of concern to increase and revise the tolerance for egg from 0.05(N) to 0.30 ppm; to decrease and revise the tolerance in or on poultry, fat from 0.1(N) to 0.05 ppm; to increase and revise the tolerance for poultry, meat byproducts from 0.1(N) to 0.50 ppm; and maintain and revise the tolerance in or on poultry, meat from 0.1(N) to 0.10 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Residues of propanil and its metabolites, determined as base-releasable 3, 4 DCA and expressed as propanil equivalents, were < 0.01–0.03 ppm in or on the edible portions of crayfish (1x maximum season rate). Based on these data, the Agency determined the tolerance should be 0.05 ppm on crayfish. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.274(a) for the combined propanil residues of concern in or on crayfish at 0.05 ppm.

In addition, the ''N'' (negligible residues) designation correlated with tolerances is being removed to conform to current Agency practice. Therefore, EPA is proposing to revise the tolerance in 40 CFR 180.274(a) for the combined propanil residues of concern in or on rice, straw from 75(N) ppm to 75 ppm.

2. *Phenmedipham.* The current tolerance expression in 40 CFR 180.278 refers to phenmedipham as methyl *m*-hydroxycarbanilate *m*-methylcarbanilate which should be changed to the more appropriate chemical name, 3-methoxycarbonylaminophenyl-3-methylcarbanilate. Therefore, EPA proposes to change the chemical name in 40 CFR 180.278(a) for residues of the herbicide phenmedipham to 3-methoxycarbonylaminophenyl-3-methylcarbanilate.

Spinach field trial residue data generated at the 1x seasonal application rate and 14–22 day pre-harvest interval (PHI) resulted in residues ranging from 2.1–3.6 ppm. Additional trials conducted at similar rates and PHIs yielded residues ranging from < 0.05 to 0.17 ppm. Based on the more recent residue data and use pattern, EPA has determined the tolerance on spinach should be 4.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.278(a) for residues of phenmedipham in or on spinach from 0.5 ppm to 4.0 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Sugar beet processing studies indicate that phenmedipham residues of concern concentrated 3x in dried pulp, 1.3x in molasses, and did not concentrate in sugar. Because of the concentration factors associated with dried pulp and molasses, the current tolerance of 0.1 ppm for raw beet, sugar, roots and beet, sugar, tops is not adequate to cover the dried pulp and molasses from sugar beets; therefore, the Agency has determined that tolerances should be established for beet, sugar, dried pulp at 0.5 ppm and beet, sugar, molasses at 0.2 ppm. EPA is proposing to establish tolerances in 40 CFR 180.278(a) for residues of phenmedipham in or on beet, sugar, dried pulp at 0.5 ppm and beet, sugar, molasses at 0.2 ppm.

In addition, the ''N'' (negligible residues) designation that is correlated with some of the tolerances is being removed to conform to current Agency practice. Therefore, EPA is proposing to revise the tolerances in 40 CFR 180.278(a) for residues of phenmedipham in or on beet, garden at 0.2(N) ppm to beet, garden, roots at 0.2 ppm; beet, sugar, roots at 0.1(N) ppm to 0.1 ppm; and beet, sugar, tops at 0.1(N) ppm to 0.1 ppm.

3. *Triallate.* The available data, reflecting the maximum registered use patterns, indicate that the maximum combined triallate residues of concern were 0.26 ppm in or on barley, straw;

0.12 ppm in or on the seed and pods of succulent peas; 0.39 ppm in or on the vines of succulent peas; 0.27 ppm in or on the vines of dried peas; 0.73 ppm in or on the straw (hay) of succulent peas; 0.36 ppm in or on the straw of dried peas; and 0.94 ppm in or on wheat, straw in the states of: Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. In addition, the term ''negligible residue'' and its designation, ''(N)'' associated with the barley, grain tolerance is being removed to conform to current Agency policy and practice. Based on these data, the Agency determined the tolerances should be 0.3 ppm on barley, straw; 1.0 ppm on pea, field, hay; 0.5 ppm on pea, field, vines; 0.2 ppm on pea, succulent; and 1.0 ppm on wheat, straw and recodified under 40 CFR 180.314(c) as regional tolerances. Therefore, EPA is proposing the tolerances in 40 CFR 180.314(c) for the combined residues of concern to be increased in or on barley, straw from 0.05 to 0.3 ppm; pea, field, hay from 0.05 to 1.0 ppm; pea, field, vines from 0.05 to 0.5 ppm; pea, succulent from 0.05 to 0.2 ppm; wheat, straw from 0.05 to 1.0 ppm; and reclassified from 40 CFR 180.314(a) to 40 CFR 180.314(c) for barley, grain at 0.05 ppm and wheat, grain at 0.05 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Lentil, hay is no longer considered significant livestock feed item and has been removed from Table 1 (OPPTS GLN 860.1000) and lentil, seed is covered by the established pea tolerance in accordance with 40 CFR 180.1(h). As a result, EPA proposes removing the tolerances in 40 CFR 180.314(a) for the combined triallate residues of concern in or on lentil, hay at 0.05 ppm and lentil, seed at 0.05 ppm.

Sugar beet processing studies were conducted on sugar beets treated at 5x the seasonal application rate resulting in maximum residues of 0.14 ppm in root, 0.30 ppm in dried pulp, and < 0.03 ppm in sugar and molasses. Therefore, EPA is proposing to maintain the tolerances and correct the terminology for sugar beets to include roots in 40 CFR 180.314(c) for the combined triallate residues of concern in or on beet, sugar, dried pulp at 0.2 ppm; beet, sugar, roots at 0.1 ppm; and beet, sugar, tops at 0.5 ppm.

The available data, reflecting the maximum registered use patterns, indicate that the maximum combined triallate residues of concern were < 0.02 ppm in or on the seed and pods of pea, dry and 0.94 ppm on wheat, straw. Because of similar cultural practices and identical use rates, wheat, straw data is used to support tolerances for barley, hay and wheat, hay. Based on these data, the Agency determined the tolerances should be 0.2 ppm for pea, dry and 1.0 ppm for barley, hay and wheat, hay by translating the data from wheat, straw. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.314(c) for the combined triallate residues of concern in or on barley, hay at 1.0 ppm; pea, dry at 0.2 ppm; and wheat, hay at 1.0 ppm. The Agency determined that the establishment of these tolerances is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Although tolerances are established on animal feed items, tolerances on the edible tissues of animals are not necessary because the available residue data generated using exaggerated rates indicate there is no reasonable expectation of finite residues in meat, milk, poultry, and eggs as a result of ingestion of pesticide residues on raw agricultural commodities in accordance with 40 CFR 180.6(a)(3).

4. *MCPA.* The current tolerance expression 40 CFR 180.339(a) regulates residues of the herbicide 2-methyl-4-chlorophenoxyacetic acid (MCPA) from application of the herbicide in acid form or in the form of its sodium, ethanolamine, diethanolamine, triethanolamine, isopropanolamine, diisopropanolamine, triisopropanolamine, or dimethylamine salts or isooctyl or butoxyethyl esters and 40 CFR 180.339(b) tolerances are established for combined negligible residues (N) of the herbicide 2-methyl-4-chlorophenoxyacetic acid and its metabolite 2-methyl-4-chlorophenol. Based on toxicity data for 2-methyl-4-chlorophenol, a currently regulated livestock metabolite, EPA determined that it is of significantly less concern than the parent compound and therefore can be excluded from the tolerance expression. Although the chemical name for MCPA has been presented as ''(2-methyl-4-chlorophenoxy)acetic acid'', under current chemical naming conventions the ''(4-chloro-2-methylphenoxy)acetic acid'' designation is preferred. EPA determined the residues to be regulated in plant commodities (40 CFR 180.339(a)) are parent, free and conjugated MCPA. When MCPA is applied in various forms (e.g. ethanolamine and other salts and esters), a single common moiety is released that is the pesticidally active component and serves as the basis for tolerance regulation. Therefore, EPA is proposing to change the tolerance expression in 40 CFR 180.339(a) to read as follows: tolerances are established for residues of the herbicide MCPA [(4-chloro-2-methylphenoxy)acetic acid)], both free and conjugated, resulting from the direct application of MCPA or its sodium or dimethylamine salts, or its 2-ethylhexyl ester and in 40 CFR 180.339(b) to read as follows: tolerances are established for residues of the herbicide MCPA [(4-chloro-2-methylphenoxy)acetic acid)] resulting from the direct application of MCPA or its sodium or dimethylamine salts, or its 2-ethylhexyl ester. 40 CFR 180.339 (a) and (b) will be revised to read 40 CFR 180.339 (a)(1) and (2) for consistency. Lastly, the term ''negligible residue'' and its designation, ''(N)'', associated with some tolerances is being removed to conform to current Agency policy and practice.

Currently, tolerances exist reflecting uses of MCPA on rice, sorghum, flax (straw) and canarygrass. The uses on rice, sorghum, and canarygrass are no longer registered uses (69 FR 39467, June 30, 2004) (FRL–7363–4) (71 FR 24687, April 26, 2006) (FRL–8059–2). EPA policy no longer requires tolerances to be established for flax, straw. Therefore, EPA is proposing to revoke tolerances in 40 CFR 180.339(a)(1) for the combined MCPA residues of concern in or on flax, straw at 2 ppm; grass, canary, annual, straw at 0.1 ppm; canary, annual, seed at 0.1 ppm; rice, grain at 0.1(N) ppm; rice, straw at 2 ppm; sorghum, forage at 20 ppm; sorghum, grain at 0.1 ppm; and sorghum, grain, stover at 20 ppm.

The crop field trial data indicate that the maximum combined residues of MCPA and its metabolites are < 0.29 ppm in or on alfalfa, forage and < 1.07 ppm in or on alfalfa, hay. Alfalfa, forage and alfalfa, hay data will also be used to satisfy crop field trial requirements for the clover, forage; clover hay; lespedeza, forage; lespedeza, hay; trefoil, forage; trefoil, hay; vetch, forage; and vetch, hay. Ordinarily, the Agency would not translate data from alfalfa, forage and alfalfa, hay to support uses on clover, forage; clover hay; lespedeza, forage; lespedeza, hay; trefoil, forage; trefoil, hay; vetch, forage; and vetch, hay; however, because the only supported use of MCPA on these crops is to the crops underseeded to small grains it is reasonable to use alfalfa, forage and alfalfa, hay data to support these uses. Based on these data, EPA has determined the tolerance should be 0.5 ppm in or on alfalfa, forage; clover, forage; lespedeza, forage; trefoil, forage;

and vetch, forage; and 2.0 ppm in or on alfalfa, hay; clover hay; lespedeza, hay; trefoil, hay; and vetch, hay. Therefore, EPA is proposing to increase tolerances and revise the terminology to include forage consistently in 40 CFR 180.339 (a)(1) for residues of MCPA in or on alfalfa, forage; clover, forage; lespedeza, forage; trefoil, forage; and vetch, forage from 0.1 to 0.5 ppm and alfalfa, hay; clover hay; lespedeza, hay; trefoil, hay; and vetch, hay from 0.1 to 2.0 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The crop field trial data indicate that the maximum combined residues of MCPA and its metabolites are 0.72 ppm in or on wheat, grain and 21.4 ppm in or on wheat, straw. Based on the HAFT residue of 0.08 ppm for wheat, grain, expected MCPA residues of concern in or on wheat bran and germ will not exceed the established tolerance of 0.1 ppm for wheat, grain and for wheat processed commodities. Because of similar cultural practices and identical use rates, wheat residue field trial data is used to support tolerances for barley, oat, and rye. Based on these data, EPA has determined the tolerance should be 1.0 ppm in or on barley, grain; oat, grain; rye, grain; and wheat, grain and 25 ppm in or on barley, straw; oat, straw; rye, straw; and wheat, straw. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.339(a)(1) for residues of MCPA in or on barley, grain; oat, grain; rye, grain; and wheat, grain from 0.1 to 1.0 ppm and barley, straw; oat, straw; rye, straw; and wheat, straw from 2 to 25 ppm. The Agency determined that these increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The crop field trial data indicate that the maximum combined residues of MCPA and its metabolites are 19.4 ppm (7 day PHI) in or on wheat, forage, 39.5 ppm and 111 ppm (7 and14 day PHIs, respectively) in or on wheat, hay. Also, these data are translated to support tolerances for barley, hay and oat, hay and oat, forage and rye, forage. Based on these data, EPA determined the tolerances should be 20 ppm on oat, forage; rye, forage; and wheat, forage and 115 ppm on barley, hay; oat, hay; and wheat, hay. EPA is proposing tolerances be established in 40 CFR 180.339(a)(1) for residues of MCPA in or on wheat, forage at 20 ppm; and barley, hay; oat, hay; and wheat, hay at 115 ppm; and maintain tolerances for oat, forage and rye, forage at 20 ppm. The Agency determined that these newly established tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemicals residue.

In addition, EPA is proposing to revise commodity terminology and tolerances to conform to current Agency practice at 40 CFR 180.339 as follows: ''grass, pasture and grass, rangeland at 300 ppm to grass, forage at 300 ppm;'' ''peavines at 0.1(N) ppm to pea, vines at 0.1 ppm;'' ''peavines, hay at 0.1(N) ppm to pea, hay at 0.1 ppm;'' ''vegetables, seed and pod at 0.1 ppm to pea, dry at 0.1 ppm and pea, succulent at 0.1 ppm;'' ''cattle, fat; goat, fat; hog, fat; horse, fat; and sheep, fat; cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep, meat byproducts; and cattle, meat; goat, meat; hog, meat; horse, meat; and sheep, meat at 0.1(N) ppm to 0.1 ppm;'' and ''milk at 0.1(N) ppm to 0.1 ppm.''

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for propanil, phenmedipham, triallate, and MCPA, and a TRED for propanil. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure

to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.
2. There is a reasonable expectation that finite residues will exist.
3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this proposed rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

C. When do These Actions Become Effective?

EPA is proposing that modifications, establishment, commodity terminology revisions, and revocation of these tolerances become effective on the date of publication of the final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and
2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

The tolerance actions in this proposal apply equally to domestically-produced and imported foods. In making its tolerance decisions, the Agency seeks to harmonize with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of the FFDCA. The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA also considers MRLs established in Canada and Mexico. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a Federal Register document the reasons for departing from the Codex level. Specific tolerance actions in this proposed rule are discussed in Unit II.A. EPA's efforts to harmonize with MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs as mentioned in Unit II.A. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not

contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation (this Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: September 20, 2006.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

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

2. Section 180.274 is amended by revising paragraph (a) to read as follows:

§ 180.274 Propanil; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide propanil (3′, 4′-dichloropropionanilide) and its metabolites convertible to 3, 4-dichloroaniline (3, 4-DCA) in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat byproducts	1.0
Cattle, meat	0.05
Crayfish	0.05
Egg	0.30
Goat, fat	0.10
Goat, meat byproducts	1.0
Goat, meat	0.05
Hog, fat	0.10
Hog, meat byproducts	1.0
Hog, meat	0.05
Horse, fat	0.10
Horse, meat byproducts	1.0
Horse, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, meat byproducts	0.50
Poultry, meat	0.10
Rice, bran	40
Rice, grain	10
Rice, hulls	30
Rice, straw	75
Sheep, fat	0.10
Sheep, meat byproducts	1.0
Sheep, meat	0.05

* * * * *

3. Section 180.278 is revised to read as follows:

§ 180.278 Phenmedipham; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide phenmedipham (3-

methoxycarbonylaminophenyl-3-methylcarbanilate) in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.2
Beet, sugar, dried pulp	0.5
Beet, sugar, molasses	0.2
Beet, sugar, roots	0.1
Beet, sugar, tops	0.1
Spinach	4.0

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

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

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

4. Section 180.314 is revised to read as follows:

§ 180.314 Triallate; tolerances for residues.

(a) *General.* [Reserved]

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

(c) *Tolerances with regional registrations.* Tolerances are established for residues of the herbicide (*S*-2, 3, 4-trichloroallyl diisopropylthiocarbamate) and its metabolite 2, 3, 3-trichloroprop-2-enesulfonic acid (TCPSA) in or on the following food commodities:

Commodity	Parts per million
Barley, grain	0.05
Barley, hay	1.0
Barley, straw	0.3
Beet, sugar, dried pulp	0.2
Beet, sugar, roots	0.1
Beet, sugar, tops	0.5
Pea, dry	0.2
Pea, field, hay	1.0
Pea, field, vines	0.5
Pea, succulent	0.2
Wheat, grain	0.05
Wheat, hay	1.0
Wheat, straw	1.0

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

5. Section 180.339 is revised to read as follows:

§ 180.339 MCPA; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide MCPA ((4-chloro-2-methylphenoxy)acetic acid), both free and conjugated, resulting from the direct application of MCPA or its sodium or dimethylamine salts, or its 2-ethylhexyl ester in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	0.5
Alfalfa, hay	2.0
Barley, grain	1.0
Barley, hay	115
Barley, straw	25
Clover, forage	0.5
Clover, hay	2.0
Flax, seed	0.1
Grass, forage	300
Grass, hay	20
Lespedeza, forage	0.5
Lespedeza, hay	2.0
Oat, forage	20
Oat, grain	1.0
Oat, hay	115
Oat, straw	25
Pea, dry	0.1
Pea, hay	0.1
Pea, succulent	0.1
Pea, vines	0.1
Rye, forage	20
Rye, grain	1.0
Rye, straw	25
Trefoil, forage	0.5
Trefoil, hay	2.0
Vetch, forage	0.5
Vetch, hay	2.0
Wheat, forage	20
Wheat, grain	1.0
Wheat, hay	115
Wheat, straw	25

(2) Tolerances are established for residues of the herbicide MCPA ((4-chloro-2-methylphenoxy)acetic acid) resulting from the direct application of MCPA or its sodium or dimethylamine salts, or its 2-ethylhexyl ester in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat byproducts	0.1
Cattle, meat	0.1
Goat, fat	0.1
Goat, meat byproducts	0.1
Goat, meat	0.1
Hog, fat	0.1
Hog, meat byproducts	0.1
Hog, meat	0.1
Horse, fat	0.1
Horse, meat byproducts	0.1
Horse, meat	0.1
Milk	0.1
Sheep, fat	0.1
Sheep, meat byproducts	0.1
Sheep, meat	0.1

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

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

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

[FR Doc. E6–15841 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2006–0755, EPA–HQ–SFUND–2006–0758, EPA–HQ–SFUND–2006–0759, EPA–HQ–SFUND–2006–0760, EPA–HQ–SFUND–2006–0761, EPA–HQ–SFUND–2006–0762; FRL–8223–2]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 45

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add six new sites to the NPL, all to the General Superfund Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 27, 2006.

ADDRESSES: Identify the appropriate FDMS Docket Number from the table below.

FDMS DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/state	FDMS docket ID No.
Elm Street Ground Water Contamination	Terre Haute, IN	EPA–HQ–SFUND–2006–0755.
South Minneapolis Residential Soil Contamination	Minneapolis, MN	EPA–HQ–SFUND–2006–0759.

FDMS DOCKET IDENTIFICATION NUMBERS BY SITE—Continued

Site name	City/state	FDMS docket ID No.
Sonford Products	Flowood, MS	EPA–HQ–SFUND–2006–0758.
Bandera Road Ground Water Plume	Leon Valley, TX	EPA–HQ–SFUND–2006–0760.
East 67th Street Ground Water Plume	Odessa, TX	EPA–HQ–SFUND–2006–0761.
Lockheed West Seattle	Seattle, WA	EPA–HQ–SFUND–2006–0762.

Submit your comments, identified by the appropriate FDMS Docket number, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.Docket@epa.gov*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW; Washington, DC 20460
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the appropriate FDMS Docket number (see table above). EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, that means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was

amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 et seq.

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), that EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site,

as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at *www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566–1744. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, S.W, 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3097.

Denise Baker, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue,

Mail Stop ECL–115, Seattle, WA 98101; 206/553–4303.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may use the Docket *www.regulations.gov* at to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the Headquarters Docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add six new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

State	Site name	City/county
IN	Elm Street Ground Water Contamination	Terre Haute.
MN	South Minneapolis Residential Soil Contamination	Minneapolis.
MS	Sonford Products	Flowood.
TX	Bandera Road Ground Water Plume	Leon Valley.
TX	East 67th Street Ground Water Plume	Odessa.
WA	Lockheed West Seattle	Seattle.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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. This 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially

affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 300

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

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

Dated: September 20, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E6–15854 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 263

RIN 0970–AC15

Cost Allocation Methodology Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families proposes to regulate the cost allocation methodology to be used in the Temporary Assistance for Needy Families (TANF) program. The proposed rule would require States to use the ''benefiting program'' cost allocation methodology required by OMB Circular A–87 (2 CFR Part 225) and previously required under HHS' Office of Grants and Acquisition Management (OGAM) Action Transmittal (AT) 98–2.

DATES: We will consider all comments received on or before November 27, 2006.

ADDRESSES: You may download an electronic version of the proposed rule at either of the following two Web Sites. You may submit comments, identified by Regulatory Information Number (RIN) 0970–AC, by the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Agency Web Site: http://www.regulations.acf.hhs.gov.* Follow the instructions for submitting comments.
- *Mail:* Administration for Children and Families, Office of Family Assistance (OFA), 5th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447.
- *Hand Delivery/Courier:* Office of Family Assistance/ACF, 5th Floor East, 901 D St., SW., Washington, DC 20447.

Instructions: All comments received, including any personal information provided, will be posted without change to *http://www.regulations.acf.hhs.gov.* Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at 901 D St., SW., 5th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, State TANF Policy Division at (202) 401–5150, *rshelbourne@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

We are issuing this proposed regulation under the authority granted to the Secretary of Health and Human Services (HHS) by 42 U.S.C. 1302(a). Section 1302(a) authorizes the Secretary to make and publish such rules as may be necessary for the efficient administration of functions with which he is charged under the Social Security Act.

The statute at 42 U.S.C. 617 limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We interpret this provision to allow us to regulate the use of a permissible cost allocation methodology because States and the Territories need to know what they may and may not do to avoid potential misuse of funds penalties at 42 U.S.C. 609(a)(1).

Pursuant to 42 U.S.C. 609(a)(1), we may impose a financial penalty whenever a State misuses Federal TANF funds. The TANF regulations at 45 CFR 263.11 address the proper and improper uses of Federal TANF funds. Section 263.11(b) sets forth the circumstances that constitute misuse of Federal funds. Use of Federal TANF funds in violation of any of the provisions in OMB Circular A–87 is one such circumstance. We are accordingly specifying that the ''benefiting program'' cost allocation methodology is the only allowable methodology for the proper use of Federal TANF funds.

We are issuing the proposed rule in light of a decision of the Circuit Court of Appeals for the District of Columbia in *Arizona* v. *Thompson*, 281 F.3d 248 (DC Cir. 2002). The Appeals Court invalidated HHS' Office of Grants and Acquisition Management (OGAM) Action Transmittal (AT) 98–2, dated September 30, 1998, which required States to allocate costs to each ''benefiting program'' in accordance with OMB Circular A–87.

II. Background

The Office of Management and Budget (OMB) has issued government-wide standards for allocating the costs of government programs. Specifically, OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments,'' provides that ''A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.'' Thus, costs that benefit multiple programs may not be allocated to a single program. An illustrative way to determine whether multiple programs benefit from costs is to ask, for example: In the absence of the TANF program, would another program still have to undertake the function? If the answer is yes, there is a benefit to each program and the costs should be allocated using the ''benefiting programs'' cost allocation method.

The ''benefiting program'' cost allocation method applies to all Federal programs, unless there is a statutory or OMB-approved exception. Prior to enactment of the TANF program, HHS allowed States and the Territories to charge the common administrative costs of determining eligibility and case maintenance activities for the Food Stamp and Medicaid programs to the AFDC program—a so-called ''primary program'' allocation method. This exception to the ''benefiting program'' cost allocation requirement of OMB Circular A–87 was consistent with Conference Committee language indicating AFDC might pay for these common costs because families who were eligible for AFDC (the primary program) were also automatically eligible for Medicaid and met the categorical, but not necessarily the income, requirements of Food Stamps.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) was enacted on August 22, 1996. Title I of PRWORA repealed the AFDC program and replaced it with the TANF program. Unlike AFDC, TANF eligibility no

longer automatically makes a family eligible for Medicaid, and eligibility for certain TANF services and benefits do not lead to categorical eligibility for Food Stamps.

As a result, HHS issued guidance prohibiting States from continuing to use the ''primary program'' allocation methodology. On September 30, 1998, the Office of Grants and Acquisition Management (OGAM) in HHS issued OGAM Action Transmittal (AT) 98–2 which required States to allocate costs to each ''benefiting program'' in accordance with the provisions in OMB Circular A–87. According to the instructions and rationale in OGAM AT 98–2, ''Cost shifting (to a primary program) is not permitted by most program statutes, except where there is a specific legislative provision allowing such cost shifting. While the former AFDC program allowed such an exception, the TANF legislation that replaced AFDC does not permit it being designated as the sole benefiting or primary program.'' All States submitted revised cost allocation plans to comply with this policy and since then have continued to allocate Medicaid, Food Stamp and TANF costs in accordance with a ''benefiting'' methodology.

Six States filed suit in District Court to prevent HHS from enforcing OGAM AT 98–2 (*State of Arizona, et al.*, v. *Tommy G. Thompson*). The States alleged that they incur common administrative costs that benefit the TANF, Medicaid, and Food Stamp programs and contended that the ''grandfather provision'' under 42 U.S.C. 604(a)(2) permits them to use TANF grants as they did under the AFDC program. Section 604(a)(2) provides that States may use Federal TANF funds in any manner that the State was authorized to use Federal funds received under the State's former AFDC program, the Job Opportunities and Basic Skills Training (JOBS) program or the Emergency Assistance program in effect as of either September 30, 1995 or August 21, 1996, whichever date the State has elected.

The District Court upheld the Department's position. However, the States appealed to the U.S. Court of Appeals for the District of Columbia Circuit (Court of Appeals). The Court of Appeals decided, on March 5, 2002, that the TANF legislation does not require HHS to conclude that States are prohibited from using the ''primary program'' cost allocation methodology. The Appeals Court found: ''the background against which Congress enacted welfare reform included both Circular A–87's general principle of benefiting program allocation and its well-recognized exception for the AFDC program.'' However, the Court left open the possibility that HHS could, in the exercise of its rulemaking discretion, prospectively prescribe that States use the ''benefiting program'' method to allocate common costs among programs. (281 F.3d 248 (DC Cir. 2002)).

III. Discussion of Regulatory Provisions

We propose to add the following new section to Part 263, Subpart B of the TANF regulations.

Section 263.14 What methodology shall a State use to allocate Federal TANF costs?

In light of the Appeal Court's decision that PRWORA does not preclude a State's use of ''primary program'' cost allocation, we propose to require that States, the District of Columbia and the Territories (hereinafter referred to as the ''States'') shall use only the ''benefiting program'' cost allocation methodology. Requiring a ''benefiting program'' cost allocation methodology is consistent with the TANF final rules which make the TANF program subject to 45 CFR Part 92 and includes the cost principles of OMB Circular A–87.

One of the fundamental Federal appropriation principles at 31 U.S.C. 1301(a) states that appropriations can only be used for the purposes for which they were appropriated, unless otherwise provided by law. OMB Circular A–87 reflects this principle by requiring ''benefiting program'' cost allocation. The overall purpose of OMB Circular A–87 is to achieve more efficient and uniform administration of Federal awards and to provide the foundation for greater uniformity in the costing procedures of non-Federal governments. Without an explicit legislative provision permitting ''primary program'' cost allocation, we believe it would be inconsistent with and contrary to these appropriation principles to allow TANF funds to be used to pay for costs allocable to other programs.

Since the decision of the Appeals Court, no State has submitted a revised ''primary program'' cost allocation plan for allocating the common costs of determining eligibility or case maintenance for TANF, Food Stamps and Medicaid to HHS for approval. These were the primary common costs previously claimed and allowed under a ''primary program'' cost allocation methodology under the former AFDC program. We believe these are the common costs that could be claimed under the ''grandfather'' provision of 42 U.S.C. 604(a)(2), if a ''primary program'' cost allocation method were allowed.

Because TANF eligibility no longer automatically makes a family eligible for Medicaid, and eligibility for certain TANF services and benefits do not lead to categorical eligibility for Food Stamps, the common costs of eligibility among the three programs also is now limited. This and the 15 percent administrative cost cap under the TANF block grant severely restricts the value of using a ''primary program'' cost allocation methodology. Therefore, we are exercising the Secretary's discretion to require a ''benefiting program'' cost allocation methodology under TANF in accordance with OMB Circular A–87. This proposed rule, if finalized, will require States to make no changes to their TANF cost allocation plans, but instead will affirm and lock in place current cost allocation practice.

Under the President's Management Agenda of improved accountability, each program needs to know its full costs using consistent and comparable data to assess program trends and measure performance. Appropriate program and funding decisions, both now and in the future, must be based on the knowledge and accounting of total program costs, including those costs incurred under a consistent benefiting program methodology. Under the proposed rule, we would no longer permit an exception to the benefiting program cost allocation methodology generally required under OMB Circular A–87 (as permitted for the AFDC program prior to the enactment of the TANF program). Thus, HHS will disapprove any TANF cost allocation amendments proposing a ''primary program'' cost allocation methodology.

IV. Paperwork Reduction Act of 1995

This proposed rule contains no new information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined

that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Since all States should be using a ''benefiting program'' cost allocation methodology under TANF, we believe the impact of this proposed rule is minimal. We do not believe the proposed policy will have a significant negative impact or reduce potential Federal reimbursement. Funding for TANF is a fixed block grant amount that is not affected by the allocation method.

We welcome comments on our analysis and other circumstances that could impact on States and urge States to consider the interaction of the proposed policy on their operations. We will carefully consider these comments as we finalize the regulations.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of The Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132 ''Federalism'' requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. We solicit and welcome comments from State and local government officials on this proposed rule, consistent with Executive Order 13132.

List of Subjects in 45 CFR Part 263

Grant programs—Federal aid programs, Penalties, Public assistance programs—Welfare programs.

Dated: July 5, 2006.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: July 7, 2006.

Michael O. Leavitt,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, the Administration for Children and Families proposes to amend 45 CFR chapter II to read as follows:

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

1. The authority citation for 45 CFR part 263 continues to read as follows:

Authority: 42 U.S.C. 604, 607, 609, and 862a.

2. Add section 263.14 to subpart B to read as follows:

§ 263.14 What methodology shall a State or Territory use to allocate TANF costs?

A State or Territory shall use a benefiting program cost allocation methodology consistent with the general requirements of OMB Circular A–87 to allocate TANF costs.

[FR Doc. E6–15852 Filed 9–26–06; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–106]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule published in the **Federal Register** of September 13, 2006, regarding Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. This correction clarifies text that was revised or omitted when previously published in the **Federal Register**.

DATES: Comments are due on or before October 30, 2006. Reply comments are due on or before November 13, 2006. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements should be submitted on or before November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

Correction

In proposed rule FR Doc. E6–14901, beginning on pages 54009 and 54010 in the issue of September 13, 2006, make the following corrections:

1. On page 54009, in the 2nd column, correct the **ADDRESSES** section as follows:

ADDRESSES: You may submit comments, identified by [CG Docket number 03–123 and/or FCC Number 06–106], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, you may submit your PRA comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov,* and to Allison E. Zaleski, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Allison_E._Zaleski@omb.eop.gov,* or via fax at (202) 395–6466. To submit your comments by U.S. postal mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1-C216, Washington, DC 20554.

2. On page 54010, in the 2nd and 3rd columns, where it reads Initial Paperwork Reduction Act of 1995 Analysis, correct as follows:

Initial Paperwork Reduction Act of 1995 Analysis

The *2006 Cost Recovery FNPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the PRA of 1995, Public Law 104–13. Public and agency comment are due November 27, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *2006 Cost Recovery Further Notice of Proposed Rulemaking,* CG Docket No. 03–123, FCC 06–106.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Number of Respondents: 5,098.

Number of Responses: 5,285.

Respondents: Business and other for-profit entities; and State, Local or Tribal Government.

Estimated Time per response: 10 hours—1,000 hours.

Frequency of Response: Annual and on occasion reporting requirements; Recordkeeping; Third party disclosure.

Total Annual Hourly Burden: 37,757.

Total Annual Costs: $0.00.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 21, 2001, the Commission released the *2001 TRS Cost Recovery MO&O & FNPRM,* In the Matter of Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guideline, CC Docket No. 98–67, FCC 01–371. In the 2001 TRS Cost Recovery MO&O & *FNPRM*, the Commission directed the TRS administrator to continue applying the average per minute compensation methodology to develop traditional TRS compensation rates; required TRS providers to submit certain TRS-related costs and demand data to TRS Fund administrator; and directed the TRS administrator to expand the TRS Center Data Request, a form for providers to itemize their actual and projected cost and demand data, to include specific sections to capture STS and VRS costs and minutes of use.

On October 25, 2002, the Commission released the *Fifth Report and Order on TRS,* In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket Nos. 90–571 & 98–67, FCC 02–269. In the *Fifth Report and Order on TRS,* the Commission concluded that carriers need not provide coin sent-paid TRS calls from payphones because it was infeasible to provide coin sent-paid relay service through payphones at that time, and coin sent-paid functionality was not necessary to achieve functional equivalence. Further, in the *Fifth Report and Order on TRS,* the Commission required TRS providers to submit a one-time report to the Commission, detailing the steps taken to comply with the consumer education recommendations contained in the *Fifth Report and Order on TRS.* The submission of a one-time report has been completed, thus the TRS providers are no longer required to submit a report in compliance of the *Fifth Report and Order on TRS.*

On July 20, 2006, the Commission released a *2006 Cost Recovery FNPRM,* In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–106. The Commission seeks comment on a broad range of issues concerning the compensation of providers of TRS from the Interstate TRS Fund (Fund). In the *2006 Cost Recovery FNPRM,* the Commission seeks comment on: (1) Hamilton's proposed ''MARS'' plan and alternative cost recovery methodologies for traditional TRS, STS and Internet Protocol (IP) Relay, including any possible changes to the existing TRS Center Data Request form; (2) appropriate cost recovery methodology for VRS, including possible changes to the existing TRS Center Data Request form; and (3) the basis of ''reasonable'' costs of providing all forms of TRS that should be compensable under present cost recovery methodology, including marketing and outreach expenses, overhead costs and executive compensation. The *2006 Cost Recovery FNPRM* proposes a reporting requirement that certified state TRS programs would be required to submit rate data to the Commission, either annually or for a multi-year period, for their respective intrastate traditional TRS and STS services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–8180 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[1018–AU94]

Revision of Federal Duck Stamp Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service, or we), propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. We propose a special exemption that would allow recent winning artists to submit entries for the 2007 contest. We also propose to codify our longstanding practice of limiting judges to only one term. We also propose to clarify in our regulations our longstanding practice to include artwork from the third round of judging in an art tour for a year; early return of the artwork to the artist will make the artist ineligible for the next three (3) contests. Finally, we propose to clean up grammatical errors in the contest procedures.

DATES: To ensure our consideration, we must receive your comments on this proposal by October 27, 2006.

ADDRESSES: For information on requirements for submitting or viewing comments, see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Patricia Fisher, Chief, Federal Duck Stamp Office, (703) 358–2000 (phone), *duckstamps@fws.gov* (e-mail), or (703) 358–2009 (fax).

SUPPLEMENTARY INFORMATION: We propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. We propose a special exemption that would allow winning artists from the 2004–06 contests to submit entries for the 2007 contest. We also propose to codify our longstanding practice of limiting judges to one term. We also propose to clarify in our regulations our longstanding practice to include artwork from the third round of judging in an art tour for a year, and make it clear that early return of the artwork to the artist will make the artist ineligible for the next three (3) contests. Finally, we propose to clean up grammatical errors in the contest procedures. We do not believe our proposed changes have much impact on the body of the regulations, because they relieve restrictions on the public, clarify existing and new practices, or make corrections. Therefore we believe 30 days will allow the public sufficient time to review and respond to our proposed changes. The public will benefit from having final regulations in place well in advance of our June 2007 contest opening date.

Background

For the history of the Federal Duck Stamp Program and the contest, please see our proposed rule for a previous unrelated change to the duck stamp regulations (April 12, 2006, 71 FR 18697).

Proposed Changes

The regulations governing the contest are at 50 CFR part 91.

Exemption for Winning Artists

Section 91.12 contains a 3-year prohibition against winning artists participating in the three successive contests. We put this rule into place as a way to ensure that a variety of artists can compete fairly and to avoid allowing a single individual to repeatedly win the contest. However, we want to exempt the 2007 contest from this rule, because the 2007 contest marks an important milestone, since it will choose the 75th Federal Duck Stamp. This significant event will be very important for all wildlife artists, and we should therefore allow everyone an equal chance to compete. We propose that this prohibition be lifted for the 2007 contest only. We further propose that this exemption will not be counted towards the remainder of the waiting period for 2004–06 winning artists. These recent winning artists must complete their waiting periods in full and will have to serve the remainder of their terms after the 2007 contest. Two examples follow.

1. *Ann wins the 2006 contest. She may enter the special 2007 contest. Regardless of whether she wins 2007 or not, she is ineligible to enter in 2008, 2009, or 2010. She may enter in 2011.*

2. *Bob wins the 2005 contest. He was ineligible to enter the 2006 contest. He may enter the special 2007 contest. Regardless of whether he wins 2007 or not, he is ineligible to enter in 2008 or 2009, but he may enter in 2010.*

Judges Serve for One Contest

Section 91.21 specifies the selection and qualifications necessary for contest judges. One practice that has been in effect for the past 40 years, but which is not in the regulations, is that we have limited judges to serve for only one contest. This practice allows more people to serve as judges, provides a greater range of possible judges, and prevents any possible collusion between judges and artists. We now propose to codify this longstanding existing practice into the CFR.

Contest Procedures

Section 91.24 paragraphs (g) and (h) have typographical errors. We would like to correct the errors in our presentation of the possible numerical scores that can be awarded by judges.

Post-Contest Finalists' Tour

Section 91.31 specifies the return of artwork after the contest has concluded. We would like to clarify the portion of the regulations that mentions the possibility of the artwork being sent on a tour to appear at one or more wildlife art exhibitions. Recently artists believed that the 120-day limit was all that had to be honored. We would like to clarify this requirement.

The art tour is a chance for the public to see the finalists in the Federal Duck Stamp Contest. These are the entries that made it to the third and final round of judging. The tour travels to various locations across the country and allows the public to see some of the best examples of wildlife art. With the tour, we engage new artists to enter the contest and encourage the general public to purchase more stamps. Unfortunately, some artists have chosen to sell their pieces before or during the art tour and have requested to remove them from the tour. This lessens the quality of the paintings available for the public to view and is against the spirit of the tour. We would like to clarify that the tour lasts for 1 year after the date on which the winner is judged, and entries will be returned after the year is up. We also propose that artists who remove their artwork before the tour is complete will be ineligible to participate in the three successive contests.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866.

1. This proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule deals solely with the Federal Duck Stamp Contest. No other Federal agency has any role in regulating this endeavor.

3. This proposed rule would not alter budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of the Federal Duck Stamp Contest.

4. This proposed rule would not raise novel legal or policy issues. This is primarily a reorganization and clarification of existing regulations. New provisions proposed are in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes we propose are intended primarily to clarify the requirements for the contest. These changes would affect individuals, not businesses or other small entities as defined in the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not major under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Would not have an annual effect on the economy of $100 million or more.

2. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. It would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collections for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. 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.

National Environmental Policy Act

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*) is therefore not required.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This document proposes to revise the current regulations in 50 CFR part 91 that govern the duck stamp contest. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the rule clearly stated?
2. Does the rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, and so forth) aid or reduce its clarity?
4. Would the rule be easier to understand if it were divided into more (but shorter) sections?
5. Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful toward your understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Public Comments Solicited

We are asking the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to comment on this proposed rule so that any final action resulting from this proposal will be as accurate and as effective as possible. Comments will become part of the Administrative Record for this rulemaking action. You may inspect comments at the hand-delivery address during normal business hours.

You may submit comments by any one of the following methods:

1. *Federal Duck Stamp Web site: http://www.fws.gov/duckstamps.* Follow the instructions for submitting comments.
2. *E-mail: duckstamps@fws.gov.*
3. *Fax:* 703–358–2009 to Chief, Federal Duck Stamp Office.
4. *U.S. Mail:* Chief, Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1622.
5. *Hand Delivery:* Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4070, Arlington, VA.
6. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit e-mailed or Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1018–AU94'' and your name and return U.S. mail address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly at (703) 358–2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise § 91.12 to read as follows:

§ 91.12 Contest eligibility.

(a) U.S. citizens, nationals, or resident aliens are eligible to participate in the contest.

(b) Any person who has won the contest during the preceding 3 years will be ineligible to submit an entry in the current year's contest. For the 75th contest (2007) only, any artist, even those who won the 2005 and 2006 contests, may enter. However, 2005 and 2006 winners must still fulfill their 3-year ineligibility terms after the 2007 contest. The 2007 contest will not be counted toward fulfilling ineligibility terms of 2005 or 2006 winners.

(c) All entrants must be at least 18 years of age by the contest opening date (see § 91.11) to participate in the contest.

(d) Contest judges and their relatives are ineligible to submit an entry.

(e) All entrants must submit a nonrefundable fee of $125.00 by cashier's check, certified check, or money order made payable to U.S. Fish and Wildlife Service. Personal checks will not be accepted.

(f) All entrants must submit a signed Reproduction Rights Agreement and a signed Display and Participation Agreement.

3. Add a new paragraph (d) to § 91.21 to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(d) *Term:* Judges serve for the period of one contest only. No former judge will be eligible to serve in any successive contests.

4. Revise § 91.24 paragraph (g) and paragraph (h) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges per paragraph (d) of this section, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. Each judge will vote by indicating a numerical score of one (1), two (2), three (3), four (4), or five (5) for each entry. The scores will be totaled to provide each entry's score. The five entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two, except that they will indicate a numerical score of three (3), four (4), or five (5) for each entry. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

* * * * *

5. Revise § 91.31 to read as follows:

§ 91.31 Return of entries after contest.

(a) All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed 1 year after the date of the contest.

(b) Artists in the third round of judging will be chosen to appear in a national art tour that will last 1 year. The artwork will be returned to the artists after that period in accordance with the signed participation agreement.

(c) An artist may choose to remove his or her artwork from the tour, but will forfeit contest eligibility for three (3) successive contests.

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–15839 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.060901235–6235–01; I.D. 082406C]

RIN 0648–AQ87

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Herring Fishery Management Plan

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP). Amendment 1 was developed by the New England Fishery Management Council (Council) to establish a limited access program, and to make other changes in the management of the Atlantic herring fishery. The Amendment 1 measures being proposed include: A limited access program; an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area; establishment of a maximum sustainable yield (MSY) proxy; an approach to determining the distribution of area-specific Total Allowable Catches (TACs); a multi-year specifications process; a research quota set-aside for herring-related research; a set-aside for fixed gear fisheries; a change in the midwater trawl gear definition; and additional measures that could be implemented through the framework adjustment process. The intent of this action is to provide efficient management of the Atlantic herring fishery and to meet conservation objectives.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern daylight time on November 13, 2006.

ADDRESSES: Copies of supporting documents used by the Council, including the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FSEIS/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

Written comments on the proposed rule may be sent by any of the following methods:

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments Herring Amendment 1''
- Fax to Patricia A. Kurkul (978) 281–9135;
- E-mail to the following address: *HerrAmend1@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments HerrPropRuleAmend1.''
- Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to David__Rotsker@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The primary purpose of Amendment 1 is to modify the management program for the Atlantic herring fishery by implementing a limited access program to better match the capacity of the fleet to the resource. The amendment also would modify other management measures so that the Atlantic herring resource is managed more efficiently and sustainably.

In July 1999, the Council voted to develop a limited or controlled access program for the herring fishery, and NMFS, at the request of the Council, established September 16, 1999 (64 FR 50266), as a control date for the Atlantic herring fishery in Federal waters. Scoping meetings for an amendment to FMP were conducted in February 2000, shortly after completion of the FMP, with public hearings taking place that month in Maine, Massachusetts, Rhode Island, and New Jersey. In April 2003, the Council re-initiated scoping, holding public hearings in April and May of that year in Maine, Massachusetts, and New Jersey.

During both rounds of scoping, comments were sought on limited/controlled access in the herring fishery, particularly in Area 1A, the inshore Gulf of Maine (GOM), because at that time the concern about excess capacity in the fishery was focused on Area 1A. The TAC in this area has represented at least 60 percent of the total landings of this fishery since the FMP was implemented, and the area has been closed to directed fishing because the TACs for that area was caught every year. As a result, the Council concluded that the capacity in this area should be restricted to avoid problems that result from excess fishing capacity, such as a race to fish as increasing numbers of vessels try to catch herring before the TAC is attained and the directed fishery is closed.

Although TACs in Areas 1B, 2, and 3 (southern New England, the Mid-Atlantic, and Georges Bank (GB), have not been fully harvested since the implementation of the FMP (with the exception of Area 1B during the 2001 and 2004 fishing years), the Council concluded that sufficient capacity currently exists for the fleet to harvest the TACs in those areas, and this amendment proposes a limited access program for these areas as well. By taking such action now, the Council hopes to avoid future problems with excess capacity in these areas.

During the development of Amendment 1, both as a result of issues raised by the Council and by the public during scoping, a variety of elements were added to Amendment 1, all of which are intended to improve the management of the fishery and contribute to the sustainability of the stock. These include an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area (PS/FG); establishment of an MSY proxy; an approach to determining the distribution of area-specific TACs; a multi-year specifications process; a research quota set aside for herring-related research; a set-aside for fixed gear fisheries; the inclusion of the Maine fixed gear fishery catch in New Brunswick weir fishery catch; measures to address bycatch of multispecies in the herring fishery; a change in the midwater trawl gear definition; and additional measures that can be implemented through the framework adjustment process.

Relation to Existing Herring Regulations

In Amendment 1, the Council noted that it intended to maintain existing herring management measures in effect unless they were explicitly revised in Amendment 1. However, NMFS is proposing to revise existing provisions in § 648.13 related to the transfer of fish at sea in order to enforce the possession restrictions proposed in Amendment 1. These revisions do not make any substantive change to the regulations, nor do they apply any requirements beyond those proposed by the Council. They simply make it clear that the possession limits proposed in Amendment 1 apply whether the permitted herring vessel is landing on shore or transferring at sea. /NMFS invites public comment on these revisions in order to ensure that they are consistent with the Council's intent in creating the varying possession restrictions.

Amendment 1 would establish four classes of vessel permits with associated possession limits: (1) The limited access permit for all areas would authorize a vessel to harvest herring from any herring management area without possession restrictions until 95 percent of the management area TAC is attained; (2) the limited access permit for Areas 2 and 3 would authorize a vessel to harvest herring from those management areas without possession restrictions until 95 percent of the management area TAC is attained; (3) the limited access incidental catch permit would authorize a vessel to harvest up to 55,000 lb (25 mt) of herring per trip (with one landing allowed per calendar day) from any herring management area until 95 percent of the management area TAC is attained; and (4) the open access incidental catch permit would authorize a vessel to harvest up to 6,600 lb (3 mt) of herring per trip (with one landing allowed per calendar day) from any area until 95 percent of the management area TAC is attained. Upon attainment of 95 percent of any management area TAC, the directed fishery would be closed and all herring vessels would be limited to 2,000 lb (907.2 kg) of herring per trip harvested from that area (with only one landing allowed per calendar day).

To assure that vessels harvest herring only as authorized by the conditions of their vessel permit, NMFS proposes to specify that the transfer of fish at sea can occur only if the vessel transferring the herring complies with the possession limit restrictions outlined above. This is intended to assure that the provision maintains the integrity of the possession limits.

In addition, NMFS notes that some of the restrictions currently specified in Letters of Authorization (LOAs) for transferring herring at sea and serving as a carrier for herring were not reflected in the regulations. To rectify this inconsistency, NMFS has added text to the regulations to reflect all of the requirements of the LOAs.

Finally, NMFS has revised the permitting requirements for at-sea processing vessels. The existing herring regulations require such vessels to be issued a vessel permit for at-sea processing. In addition, such vessels are subject to dealer reporting requirements in § 648.7(a). This proposed rule would require at-sea processing vessels to obtain dealer permits rather than vessel permits. This would be consistent with the reporting requirement, and with the at-sea processor requirement of the Atlantic mackerel fishery.

Particular Issues of Concern

NMFS requests particular scrutiny of the regulations at § 648.200(b)(3) concerning the specification of TAC reserves in the specifications-setting process. As currently written, the regulations allow the Council to set aside a reserve of herring from any of the management areas, to be allocated at the discretion of the Regional Administrator based on the progress of the fishery toward the utilization of the area TACs. Because the reserve has

never been tapped, and in recent years the Council has not elected to set a reserve, NMFS requests the Council and the public to consider the need to maintain the reserve option as part of the specifications process.

Background

At its final meeting for Amendment 1, the Council separated the measures to address bycatch in the herring fishery from Amendment 1 to the FMP, and agreed to submit these measures separately as Framework 43 to the Northeast Multispecies FMP (Framework 43). The measures contained in Framework 43 were included in the Draft Supplemental Environmental Impact Statement (DSEIS) and public hearing document for Amendment 1 to the Atlantic Herring FMP. The Council voted on February 2, 2006, to adopt the measures in Amendment 1 and Framework 43, but to submit Framework 43 in advance of Amendment 1 in order to establish measures for the fishery as soon as possible during the 2006 summer season. The proposed rule for Framework 43 was published in the **Federal Register** on June 21, 2006 (71 FR 35600), with public comment through July 6, 2006. The final rule was published on August 15, 2006 (71 FR 46871), and was effective upon publication. The Council intended that all of the provisions in Framework 43, which applied to Category 1 vessels, would apply to limited access herring vessels if and when Amendment 1 was implemented. The background section for the final rule to Framework 43 included the following text, explaining this transition. ''the public should be aware that the Council is proposing to revise the Atlantic herring vessel permit requirements in Amendment 1. Amendment, which has been submitted to NMFS for review, would revise the vessel permitting requirements for the herring fishery by establishing limited access permits for vessels that fish for large amounts of herring, and maintain an open access permit for vessels that catch herring incidentally. If the limited access permit measures proposed in Amendment 1 are approved and implemented by NMFS, the measures proposed in this rule would, in the future, be applicable to all vessels issued limited access permits.'' As a result, NMFS proposes to revise the Framework 43 regulations to clarify that the bycatch provisions, which under Framework 43 apply to Category 1 herring vessels, would apply to vessels permitted under the new limited access program established under Amendment 1.

The notice of availability for the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 1 and Framework 43, was published in the **Federal Register** on September 9, 2005 (70 FR 53657), with public comment accepted through October 24, 2005. Public hearings were held in October, in six locations from Maine to New Jersey. At its January 31–February 2, 2006, meeting, the Council voted to adopt Amendment 1 for submission to NMFS, and it submitted the document and associated analyses on May 3, 2006.

A Notice of Availability (NOA) for Amendment 1, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on September 6, 2006 (71 FR 52521). The comment period on Amendment 1 ends on November 6, 2006. In addition to the implementing measures proposed in this rule, Amendment 1 contains changes to the herring overfishing definition that are not reflected in the regulations.

Proposed Measures

NMFS is publishing the Council's proposed regulations for the measures in Amendment 1, with one exception. Amendment 1 included a measure that would have allowed the harvest of herring by fixed gear fishermen in Downeast Maine (East of Cutler, Maine-the Downeast Maine Fixed Gear Fishery) to be exempt from the TACs that govern the fishery. Catch from the Downeast Maine fixed gear fishery (weirs and stop seines East of Cutler) would be included as part of the assumed catch from the New Brunswick (NB) weir fishery when determining area-specific TACs and herring fishery specifications (currently 44 million lb (20,000 mt)). During the fishing season, catch from the Downeast Maine Fixed Gear Fishery would not be counted against the TAC for Area 1A, and the fixed gear fishery would be allowed to continue to operate once the Area 1A TAC has been reached. This measure would apply to fixed gear (stop seine and weir) catches in waters north of a line drawn from Spruce Point (44° 36.2′ N. lat and 67° 16.8′ W.long), Cross Island, Cutler, Maine, due east magnetic to the international boundary with Canada. The Council recognized that fixed gear fishing occurs primarily in inshore waters, but extending the exemption line throughout the Exclusive Economic Zone (EEZ) was proposed to simplify the administration and enforcement of this measure.

NMFS is not publishing proposed regulations to implement these measures because they have been determined, prima facie, to be inconsistent with National Standard 1 of the Magnuson-Stevens Act. The measures would essentially allow a portion of the fishery to remain completely unregulated without corresponding conservation benefits. Even though the Council has pointed out that recent catches from the fixed gear fishery east of Cutler are virtually non-existent, that does not mean that would remain the case. If the fixed-gear landings from this area were to increase dramatically, NMFS would have no means of regulating that catch to ensure the integrity of the TACs established for the fishery. This measure also has been determined to be inconsistent with National Standard 3, the requirement to manage an individual stock unit throughout its range.

1. Exemption From Vessel Permit Requirements

This action would continue to allow the following vessels to fish for, catch, possess, transport, or land Atlantic herring in or from the Exclusive Economic Zone without a Federal permit: A skiff or other similar craft used exclusively to deploy the net in a purse seine operation conducted by a vessel that is permitted to fish for Atlantic herring under the proposed program; and a vessel that possesses herring solely for its own use as bait, providing the vessel does not use or have on board purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring. NMFS has clarified the existing provision for this exemption to indicate that such vessels cannot transfer, sell, trade, or barter such herring.

2. Limited Access Vesssel Permits

Amendment 1 would implement two categories of limited access permits that would authorize vessels to fish for herring without being limited by a possession limit: (1) an All Areas Limited Access Herring Permit, which would authorize vessels to fish in all management areas; and (2) an Areas 2 and 3 Limited Access Herring Permit, which would authorize vessels to fish only in management areas 2 and 3. The limited access directed fishery eligibility criteria are intended to qualify vessels with significant fishing history and participation in the herring fishery. Most of these vessels are currently issued a Category 1 herring permit that is required of vessels that land, or intend to land, > 1.1 million lb (500 mt) of herring annually. These

vessels land the vast majority of Atlantic herring during each fishing year. While vessels that qualify for the limited access directed fishery permits would not be restricted by a possession or trip limit for herring, they would be subject to the other regulations established through the Atlantic Herring FMP. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring would be closed, and limited access directed fishery permit holders would be limited to 2,000 lb (907.2 kg) of herring per trip in that management area.

A vessel would be eligible for either an All Areas Limited Access Herring Permit or an Areas 2 and 3 Limited Access Herring Permit if it meets one of the two following permit history criteria: The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sand or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4.

To qualify for the All Areas Limited Access Herring Permit, the vessel and/or any vessel it replaced must have landed and sold at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. To qualify for an Areas 2 and 3 Limited Access Herring Permit, the vessel and/or any vessel it replaced must have landed at least 250 mt of herring in any one calendar year between January 1, 1993 and December 31, 2003, as verified by NMFS records or documented through dealer receipts.

For vessels that meet the limited access permit eligibility requirements, but have not been replaced, see section 4, and the information about confirmation of permit history (CPH).

3. Limited Access Incidental Catch Herring Permit

The Council determined that there are a number of vessels that are not heavily dependent on herring in terms of a percentage of their total catch, but rely on herring as part of an overall harvest strategy, and proposes to establish a Limited Access Incidental Catch Herring Permit to accommodate such vessels. Many of these vessels have an incidental catch of herring while fishing in other small-mesh, high-volume fisheries for species including Atlantic mackerel, *Loligo* squid, and whiting (silver hake). This measure is intended to provide such vessels with an opportunity to land relatively small amounts of herring rather than increase the potential for regulatory discarding of herring in such fisheries.

A vessel is eligible for and may be issued either a limited access Incidental Catch Herring Permit if it meets one of the two following permit history criteria: The vessel must have been issued a Federal permit to fish for Atlantic herring, *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies), during the 2005 fishing year as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sank or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4.

To qualify for a limited access incidental catch herring permit, the vessel and/or any vessel it replaced must have landed and sold at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. For vessels that meet the limited access permit eligibility requirements, but have not been replaced, see section 4, and the information about CPH.

NMFS requests comments on whether vessels that sank, were destroyed or sold in the manner described in the previous paragraph, should be required to have been issued a Federal herring permit (Category 1 or 2) any time between November 10, 2003, and November 9, 2005. Specifically, NMFS would like to know if the Council intended that such a vessel should not be allowed to meet the permit requirement if it had been issued a Federal permit to fish for *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies), during the 2005 fishing year as of November 10, 2005, and have landed at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003. If a vessel could qualify for a limited access incidental catch permit with a *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies) permit, there appears no reason that the requirments should necessarily differ for vessels that sank, were destroyed, or were sold.

Vessels with limited access incidental catch permits would be restricted by a possession limit of 55,000 lb (25 mt) of herring and limited to one landing of herring per calendar day. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring would be closed, and limited access incidental catch permit holders would be limited to 2,000 lb (907.2 kg) of herring per trip.

Amendment 1 would allow a vessel to be issued multiple herring permits. For instance, a vessel could have landings history sufficient to qualify for the Areas 2 and 3 Limited Access Herring Permit, but not the All Areas Limited Access Herring Permit. Such a vessel could also qualify for a Limited Access Incidental Catch Permit. In this case, the vessel could not possess herring in excess of the Limited Access Incidental Catch Herring Permit possession limit of 55,000 lb (25 mt) if it fishes any part of a trip in Area 1, regardless of whether it catches herring from Areas 2 or 3. However, the vessel could catch and land herring in excess of 55,000 lb (25 mt) in or from areas 2 and 3, provided it stowed its gear while transiting Area 1.

4. Limited Access Vessel Permit Provisions

Amendment 1 would establish measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures would apply to all limited access vessels. The provisions proposed in this amendment are consistent with those that govern most of the other Northeast region limited access fisheries, e.g., there are some differences in the limited access program for American lobster.

Initial Eligibility

Initial eligibility for a herring limited access permit would have to be established during the first year after the implementation of Amendment 1. A vessel owner would be required to submit an application for a herring limited access permit or CPH within 12 months of the effective date of the final regulations.

CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, or been destroyed, or transferred to another person, would be required to apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant would have to show that the qualifying vessel meets the eligibility requirements for the limited access herring permit in question, and that all other permit restrictions are satisfied (e.g., permit splitting). Issuance of a valid CPH would preserve the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. A CPH would have to be applied for in order for the applicant to preserve the limited access eligibility of the qualifying vessel. Vessel owners who were issued a CPH could obtain a vessel permit for a replacement vessel based upon the previous vessel's history that would utilize the CPH consistent with the vessel size upgrade restrictions.

The owner of a qualifying vessel that has sunk, been destroyed, or been transferred to another person without the Atlantic herring fishing history, but not yet replaced, would be required to apply for a CPH within the first year after the implementation of Amendment 1.

Landings History

Unless NMFS data already demonstrate that a vessel made landings of herring that satisfy the eligibility criteria for a limited access permit, applicants would have to submit dealer receipts that verify landings. Amendment 1 specifies that the owners of pair trawl vessels may divide the catch history between the two vessels in the pair through third party verification and supplemental information, such as vessel trip reports (VTR) or dealer reporting. The two owners must apply for a limited access permit jointly and must submit proof that they have agreed to the division of landings.

Extension of Qualification Period

A vessel owner who could prove that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, and landed the amount of fish required by the limited access program as of December 31, 2004, would be able to apply for and obtain a limited access permit as long as it meets the permit eligibility criteria. This measure would provide such vessels with a 1–year extension of the qualification period for the landings portion of the eligibility criteria.

Permit Transfers

An Atlantic herring limited access permit and fishery history would be presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

Permit Splitting

Amendment 1 adopts the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, a limited access permit may not be issued to a vessel if the vessel's permit or fishing history has been used to qualify another vessel for a limited access permit. This means all limited access permits, including herring limited access permits, must be transferred as a package when a vessel is replaced or sold. Amendment 1 explicitly states that the permit-splitting provision is intended to apply to the transfer/sale of herring fishing history prior to the implementation of Amendment 1, if any limited access permits were issued to the subject vessel. Thus vessel owners who sold vessels with limited access permits and retained the herring history with the intention of qualifying a different vessel for the herring limited access program would not be allowed to do so under Amendment 1, unless the limited access permits on the sold vessel are permanently relinquished by the owner.

Qualification Restriction

Consistent with previous limited access programs, no more than one vessel would be able to qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claimed eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator would determine who is entitled to qualify for the permit or CPH.

Appeal of Permit Denial

Amendment 1 specifies an appeals process for applicants who have been denied a limited access Atlantic herring permit. Such applicants would be able to appeal in writing to the Regional Administrator within 30 days of the denial, and any such appeal would have to be based on the grounds that the information used by the Regional Administrator was incorrect.

The appeals process would allow an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied a limited access herring permit could fish for herring, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator would issue such a letter for the pendency of any appeal. If the appeal was ultimately denied, the Regional Administrator would send a notice of final denial to the vessel owner; and the authorizing letter would become invalid 5 days after receipt of the notice of denial.

Vessel Upgrades

A vessel could be upgraded in size, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with limitations in Amendment 1. The vessel's horsepower (HP) could be increased only once, whether through refitting or replacement. Such an increase could not exceed 20 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, gross registered tonnage (GRT), and net tonnage (NT) could be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size could not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade could be done separately from an engine HP upgrade.

Amendment 1 maintains the existing Herring FMP specification of maximum length, size, and HP for vessels engaged in the Atlantic herring fishery (165 ft (50.2 meters), 750 GRT (680.3 mt), and 3,000 HP). In addition, existing regulations that exempt USAP vessels from these size limits would be maintained.

Establishing Vessel Baselines

A vessel's baseline refers to those specifications (length overall, GRT, NT, and HP) from which any future vessel size change is measured. The vessel baseline specifications for Atlantic herring vessels issued limited access permits would be the specifications of the vessel that was initially issued a limited access permit as of the date that the initial vessel applied for such a permit. If a vessel owner is initially issued a CPH instead of a permit, the vessel that provided the CPH eligibility would establish the size baseline against which future vessel size limitations would be evaluated.

Vessel Replacements

The term vessel replacement (vessel replacement), in general, refers to replacing an existing limited access vessel with another vessel. In addition to addressing increases in vessel size and HP, Amendment 1 would establish a restriction that requires that the same entity must own both the limited access vessel (or fishing history) that is being replaced, and the replacement vessel.

Voluntary Relinquishment of Eligibility

Amendment 1 includes a provision to allow a vessel owner to voluntarily exit a limited access fishery. Such relinquishment would be permanent. In some circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other Northeast Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's limited access permit history for the herring fishery is voluntarily relinquished to the Regional Administrator, no limited access permit for that fishery could ever be reissued or renewed based on that vessel's history.

Permit Renewals and CPH

Amendment 1 specifies that a vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for issuance of a CPH. A CPH is issued to a person who does not currently own a particular fishing vessel, but who has legally retained the fishing and permit history of the vessel for the purpose of transferring it to a replacement vessel at a future date. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel.

A vessel's limited access permit history would be cancelled due to the failure to renew, in which case, no limited access permit could ever be reissued or renewed based on that vessel's history or to any other vessel relying on that vessel's history.

All limited access permits must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued. A complete application for such permits must be received no later than 30 days before the last day of the fishing year.

5. Open Access Vessel Permit and Possession Limit

Any vessel could be issued an open access incidental catch permit that would authorize the possession and landing of up to 6,600 lb (3 mt) of herring per trip, with a limit of one landing per calendar day. When the TAC in a management area is projected to be reached and the limited access fishery closes, the possession limit for these vessels would be reduced to 2,000 lb (907.2 kg) per trip, with a limit of one landing per calendar day, when fishing in the area. Open access vessels that land more than 2,000 lb (907.2 kg) of herring in any week would be required to report their catches on a weekly basis through the Interactive Voice Recording (IVR) reporting program described in section 6.

Amendment 1 requires an Atlantic herring carrier vessel to have an Atlantic herring permit, not have any gear on board capable of catching or processing herring, and have on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel. Amendment 1 specified that carrier vessels would not be required to qualify for a limited access permit to possess/transport herring. NMFS had drafted the regulations to specify that a carrier vessel must be issued either an open access or a limited access herring permit.

6. Reporting Requirements

All limited access directed and limited access incidental fishery permit holders would be required to report herring catches weekly through the IVR call-in system, and to file a negative report if there were no catches in a specific week. Amendment 1 would require all vessels issued a limited access directed fishery or limited access incidental catch permit (with the exception of fixed gear fishermen) to install and maintain operable Vessel Monitoring System (VMS) units, and to comply with all VMS notification and reporting requirements. Such vessels may power down the VMS unit when in port, but must re-power the VMS unit and enter an appropriate trip designation prior to leaving port.

7. Adjustments to Management Area Boundaries

Herring management measures, including TACs, are specified for four management areas (Areas 1A, 1B, 2, and 3). Amendment 1 would revise the area boundaries consistent with recommendations from the Transboundary Resource Assessment Committee (TRAC), a group comprised of both U.S. and Canadian scientists. The boundary between Areas 1B and 3 would be revised to assure that fish caught in Franklin Swell are attributed to the GB spawning component of the stock. The Area 2/3 boundary would be moved west from 69°00′ W. long. to 70′00′ W. long. to better relate catch to the TRAC conclusion that there are two spawning components of the stock: The GOM and GB/Nantucket Shoals components.

8. Maximum Sustainable Yield

In February 2003, during the development of Amendment 1, the TRAC met to try to come to consensus regarding the status of the stock and the most appropriate values for biological reference points. The two herring assessments presented at the TRAC Meeting produced different results, and no overall consensus was reached regarding which assessment is most accurate. Consequently, no specific biological reference points were provided by the joint peer review group. In the face of this scientific uncertainty, the Council decided that it was appropriate to set a relatively conservative proxy for MSY in Amendment 1, until a stock assessment could be completed that specified an analytical MSY value. Based on input from the Council's Scientific and Statistical Committee (SSC), the Council revised the reference points in the overfishing definition for Atlantic herring as follows: MSY = 220,000 mt; B_{MSY} (B_{Target}) = 1,100,000 mt; and $B_{threshold}$ = 550,000 mt. The reference points in the Atlantic Herring FMP were: MSY = 317,000 mt; BMSY (BTarget) = 1,100,000 mt; and $B_{threshold}$ = 550,000 mt (the $B_{threshold}$ established in the FMP is 1/2 B_{MSY}).

The Amendment 1 document explains that the proposed proxy reference points would be revised if a new, peer-reviewed stock assessment recommends different reference points. In May 2006, the TRAC reconvened and completed another herring assessment. The TRAC

recommended the following reference points: MSY = 194,000 mt, and Bmsy = 629,000 mt. Based on this and the FMP's guidance, B_{Target} would be 629,000 mt, and $B_{threshold}$ would be 314,500 mt (1/2 B_{MSY}). If approved in Amendment 1, these values would become the new reference points for the Atlantic herring fishery.

9. Specification of Management Measures Including TACs.

The Amendment 1 management program includes the specification of management measures for 3–year periods. This measure would maintain flexibility for the Council to adjust the fishery specifications in the interim years. If the Council determines that the specifications should be adjusted during the 3–year time period, it could do so during one or both of the interim years. No action would be required by the Council to maintain the same specifications for all 3 fishing years; Council action would only be required if adjustments to the specifications during the interim years were to be made.

Amendment 1 outlines the process for establishing the specifications. The Herring Plan Development Team (PDT), which advises the Council on technical matters pertaining to herring management, would meet with the Atlantic States Marine Fisheries Commissions' (Commission's) Technical Committee (TC) to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report every 3 years. While a SAFE report would only be prepared every three years, the Herring PDT would meet at least once during interim years to review the status of the stock relative to the overfishing definition, if information is available to do so. When conducting a 3–year review and preparing a triennial SAFE Report, the PDT/TC would report to the Council/Commission and recommend any necessary adjustments to the specifications for the upcoming 3 years. Specifications and TACs would be conveyed to NMFS once approved by the Council and published for public comment. If determined to be consistent with the FMP, final specifications would be implemented.

Amendment 1 would authorize the Herring PDT, in consultation with the Herring Committee, Advisory Panel, and other interested parties, to utilize the most appropriate analytical approach for determining the area-specific TACs during the fishery specification process, provided the PDT justifies its approach. The most appropriate analytical approach may be the current approach described in the FMP, the risk assessment approach, or another approach developed by the PDT based on the best available scientific information. This measure allows the Council to fully utilize the best scientific information and methodology available when specifications for the herring fishery are developed.

Amendment 1 specifies that the seasonal allocation of the Area 1A TAC may be reviewed and revised, if necessary, through the specification process. The Area 1A TAC is currently allocated to two periods: January-May and June-December. Amendment 1would authorize the Council to revise the seasonal allocation, as well as to specify the TAC allocation for each seasonal period.

10. TAC Set-Asides to Support Herring-Related Research

Amendment 1 would authorize the Council, in consultation with the Commission, to set aside 0–3 percent of the TAC from any management area(s) as a research set aside (RSA) to support herring-related research. The RSA would be used to support herring-related research in any management area(s), consistent with the research priorities identified by the Council. Projects funded under an RSA allocation would have to enhance understanding of the fishery resource and/or contribute to the body of information upon which management decisions are made.

The Council would determine the specific percentages for the RSA and the management area(s) to which it is applied during the fishery specification process. Amendment 1 specifies that the directed herring fishery would close in a particular management area when it was projected that 95 percent of the area TAC would be caught. The remaining 5 percent of the TAC would be set aside for catch under a 2,000–lb (907.2 kg) trip limit. The RSA would come out of the allocation for the directed fishery. For example, if the Council set aside 3 percent of the Area 1A TAC to support research, then the Area 1A directed fishery would close when 92 percent of the overall Area TAC was projected to be reached.

The RSA would be administered through a process similar to that specified by the Mid-Atlantic Fishery Management Council in several of its fishery management plans. That mechanism would include the following elements: Individual research projects may apply for the use of more than one herring research set-aside allocation; researchers may request that the set-aside be collected separately from the research trip or as part of the research trip; and research compensation trips would not all necessarily have to be conducted by the same vessel, but would have to be conducted in the management area from which the set-aside was derived.

Multi-year projects could be funded, since the RSA process is intended to be consistent with the Council's proposed 3–year specification process. The RSA would have to be utilized in the same fishing year in which it was allocated (i.e., RSA and compensation trips could not be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

Specification of RSA amounts (percentages) for the upcoming fishing years would be incorporated into the Council's fishery specification package every 3 years, and submitted to NMFS with additional analysis required, as part of the specification package. For each proposal cycle, NMFS would publish a Request for Proposals (RFP) that specifies research priorities identified by the Council and application procedures for funding through the RSA. Since specifications would be set for three fishing years, the proposal cycle would also cover 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP.

Research proposals, whenever possible, would be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals did not make use of any or all of the set-asides, NMFS would be authorized to release the unutilized portion of the RSA back to its respective management area(s) when the final specifications were published. If there were unutilized RSA available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the three-year specifications. In such case, NMFS would release the unutilized portion of the set-aside back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized RSA after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS would be authorized to release the unutilized portion of the RSA back to its respective management area(s) for all 3 fishing years covered by the specifications.

First Round Following Amendment 1 (2007–2009 Fishery Specifications)

Under the existing FMP, the Council must develop specifications for the 2007 Atlantic herring fishery during the summer/fall 2006. In anticipation of Amendment 1 implementation, the specifications will also specify multi-year specifications for the 2007–2009 fishing years. The timing of both the completion of this amendment and the fishery specification process precludes the Council from making a RSA available for the 2007 fishing year. However, the Council recommendations for 2007–2009 may include RSAs for the 2008 and 2009 fishing years. If this is the case, the Council would identify research priorities, NMFS would publish the RFP, and proposals would be reviewed and approved during the 2007 fishing year so that funds could be made available for projects at the start of the 2008 fishing year.

11. Purse Seine/Fixed Gear Only Area

Amendment 1 proposes to prohibit vessels using single or paired midwater trawls from fishing for Atlantic herring in Area 1A from June 1 September 30 of each year. There would be no restrictions on the use of midwater trawl gear in Area 1A from October 1 May 31.

Amendment 1 notes that the Council adopted this measure in response to significant and growing concern about the status of the inshore component of the herring resource, and the potential impacts of midwater trawl fishing effort, which can be highly concentrated at times, in the inshore GOM. These concerns relate primarily to the importance of herring as a forage species for other fish, marine mammals, and seabirds, and the impact that midwater trawl fishing effort may be having on localized schools of herring in nearshore areas.

Amendment 1 concluded that data suggest that there may be differences in bycatch rates, the species composition of bycatch, and bycatch mortality between purse seine and midwater trawl gear. It noted that restricting midwater trawl gear in Area 1A during the summer months may reduce bycatch and indirectly benefit other recovering stocks in the inshore GOM (groundfish stocks, for example). In addition, the Council noted that some purse seiners suggest that midwater gear disperses herring schools, making it difficult to use purse seines. Fixed gear participants argue that midwater gear keeps herring schools from coming inshore, limiting fishing opportunities for this gear type. The amendment noted that gear conflict stemming from any localized impact or perceived impact of midwater trawling on herring also may be resolved by this measure.

12. Measures to Address Fixed Gear Fisheries

Amendment 1 would set aside 500 mt of the Area 1A TAC for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of Cutler, Maine. This set-aside would be available for harvest using fixed gear west of Cutler in Area 1A until November 1 each year. If the set-aside were not utilized by the fixed gear fisheries west of Cutler in Area 1A by November 1, then it would become part of the overall allocation for Area 1A. If 95 percent of the Area 1A TAC has already been reached by November 1 (and the directed fishery in 1A is therefore closed), the reallocation of the set-aside would not result in re-opening the directed fishery, but would be available for landings under the 2,000–lb (907.2–kg) possession limit.

This measure would require real-time monitoring of fixed gear catches in Area 1A. To ensure that this set-aside is effectively monitored and enforced, fixed gear fishermen in Area 1A would be required to report their herring catches through the IVR reporting system. Because fixed gear fishermen fish exclusively in state waters and are not required to obtain a Federal limited access permit, this IVR reporting requirement has been implemented in state waters by the Commission in Amendment 2 to the Interstate FMP for Atlantic Herring, and proposed regulations relating to this measure are not included in this proposed rule.

13. Measures to Address Bycatch

As noted above, measures to address bycatch in the herring fishery were developed in conjunction with Amendment 1, but submitted separately as Framework 43. Framework 43's regulatory requirements apply to Category 1 herring vessels. These proposed regulations would eliminate the Category 1 vessel permit designation, and implement a limited access program. Therefore, this action proposes changes to the regulations that make it clear that the measures established in Framework 43 would apply to all limited access herring vessels.

14. Regulatory Definition of Midwater Trawl Gear

This action would modify the regulatory definition of midwater trawl gear to reflect the recommendations made by the Council's Enforcement Committee to improve the enforceability of the definition and clarify the public's understanding of how the gear should be fished. The restrictions included in the proposed definition would better ensure that the gear cannot be fished on the ocean bottom. This measure would improve enforcement because it would provide specific references that enforcement agents can use to ensure that the gear is being fished properly (as opposed to the current definition, which simply states that the gear is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time).

15. Framework Measures

Amendment 1 would maintain the framework adjustment process in the FMP. This action would add the following measures to the list of measures that could be implemented through a framework adjustment to the FMP in the future.

In-Season Adjustments to TACs: Amendment 1 would clarify that in-season adjustments to management area TACs could be enacted by the Council and NMFS through a framework adjustment.

Measures to Address Bycatch and Bycatch Monitoring: Amendment 1 proposes that any management measures to address bycatch and bycatch monitoring in the herring fishery could be implemented through a framework adjustment to the FMP, as well as through the herring fishery specification process.

TAC Set-Aside Amounts, Provisions, Adjustments: The Council could adjust TAC set-asides established in Amendment 1 through a framework adjustment, including the amounts and provisions related to RSA and the 500–mt set-aside for fixed gear fisheries occurring west of Cutler in Area 1A.

Classification

At this time, NMFS has not made a final determination that the FMP/amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared and NMFS has adopted a draft FSEIS for Amendment 1; a notice of availability was published on April 14, 2003 (68 FR 17903). The draft FSEIS describes the impacts of the proposed management program in detail. The overall conclusion is that the direct biological impacts of the management action on the Atlantic

herring resource will be beneficial in the long term, but are not likely to be significant. The proposed measures would maintain the existing procedures for establishing the allowed level of annual removals from the resource, and the process would incorporate updated scientific information as it becomes available.

Because herring is a primary prey species for seals, porpoises and some whales, protected species interactions with this fishery are likely. The proposed measures, however, include a limited access program that would control capitalization of the fleet, including growth of the midwater trawl sector, and a seasonal purse seine/fixed gear only area that should, at a minimum, not increase interactions with protected species beyond the status quo, and may have indirect positive benefits by imposing more controls on the fishery.

The proposed management measures that would be most likely to directly impact fishery-related businesses and communities are the proposed limited access program and the PS/FG. Both of these measures may affect access to the herring fishery for some vessel owners, and could have some socioeconomic impacts. These impacts are further described below in the IRFA summary.

Amendment 1 concludes that additional measures to minimize, mitigate or avoid impacts on Essential Fish Habitat (EFH) were not necessary, warranted, or practicable as the result of the proposed action.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0202. Under the proposed limited access program, vessel owners would be required to submit to NMFS application materials to demonstrate their eligibility for a limited access permit. The proposed rule also modifies three existing reporting and recordkeeping reporting, recordkeeping, or other compliance requirements: (1) The VMS requirement for vessels fishing under limited access permits; (2) IVR reporting requirements for vessels fishing under the limited access permits; and (3) application materials for the RSA program. These requirements do not change the reporting burden for respondents, and simply modify existing collections approved by OMB under the Northeast Region Permit Family of Forms (OMB Control No. 0648–0202).

The public reporting burden for the new requirements pertaining to the limited access program is estimated to average 0.75 hr per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *David_Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble and in Amendment 1. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*. A summary of the analysis follows:

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

During the 2004 fishing year, 86 vessels landed herring, 40 of which averaged more than 2,000 lb (907.2 kg) of herring per trip. There are no large entities, as defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Reporting Requirements

It is estimated that there will be 200 applicants for a limited access herring permit with an average processing time of 45 minutes per application for a total burden of 150 hours. Only 90 are expected to qualify and consequently renew their application each year. The renewal application is estimated to take 30 minutes on average to process for a total burden of 45 hours. Up to 10 applicants are expected to appeal the denial of their permit application. The appeals process is estimated to take 2 hours to complete, on average, with a total burden of 20 hours. The 3 year average total public cost burden for permit applications, appeals and renewals, at an hourly rate of $15, is $1,200.

New limited access herring vessels would be subject to the same replacement, upgrade, and permit history restrictions as other limited access vessels. Completion of a replacement or upgrade application requires an estimated 3 hours per response. It is estimated that no more than 20 of the 90 vessels possessing these limited access permits will request a vessel replacement or upgrade annually. This resultant burden would be up to 60 hours. Completion of a confirmation of permit history (CPH) application requires an estimated 30 minutes per response. It is estimated that no more than 10 of the 90 vessels possessing a limited access permit will request a CPH annually. The resultant burden would be up to 5 hours. At an hourly rate of $15/hour, the total public cost burden for replacement/upgrade and CPH applications is $975.

Other Compliance Requirements

The proposed PS/FG area could impose compliance costs on the owners of vessels that currently use midwater trawl gear. Some vessel owners may decide that it is essential to their fishing operation to continue to operate within Area 1A during the June-September period, and in such cases these vessel owners would need to re-rig their vessels to use purse seine gear. The costs of re-rigging are estimated in Amendment 1 to range from $300,000 to $500,000, per vessel.

Economic Impacts of the Proposed Action Compared to Significant Non-selected Alternatives

The Proposed Action management measures that are most likely to directly impact fishery-related businesses and

communities are the proposed limited access program, the PS/FG area, the open access incidental catch permit, and the vessel size upgrade restrictions.

Limited Access Program

The FSEIS estimates the numbers of vessels that would qualify for limited access permits under the different alternatives. There were six alternatives in addition to the proposed action and Alternative 1 (No Action). The alternatives distinguish between limited access directed fishery permits, that have no associated possession restrictions, and limited access incidental catch permits, that would have associated limits on the amount of herring that could be possessed. A combination of dealer and logbook data were used to estimate how many vessels would qualify under each of the proposed limited access alternatives. The FSEIS developed estimates for all the alternatives of the number of qualifying vessels, as well as the number of active vessels that would qualify. Active vessels were defined as those vessels that averaged more than 1 mt of herring per trip from 2002–2004. The analysis of active qualifiers was conducted presuming that these vessels would be most likely to participate in the fishery after the establishment of a limited access program. The FSEIS noted that the estimates of qualifying vessels are minimum estimates, as vessel owners may produce additional records demonstrating eligibility during the application process.

Under the Proposed Action, 31 vessels (28 active) would qualify for limited access directed fishery permits to fish in all management areas, and 3 additional vessels (1 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only, resulting in 34 vessels qualified for directed fishery permits. Another 56 vessels would qualify for limited access incidental catch permits with a 25–mt possession limit, resulting in a total of 90 vessels qualifying for various types of limited access permits.

Under Alternative 2, 36 vessels (31 active) would qualify for limited access directed fishery permits to fish in all management areas, and 10 additional vessels (4 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only, resulting in 46 (35 active) vessels qualified for directed fishery permits. Another 37 vessels (1 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 2 would have required a vessel to currently possess a herring permit and have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and meet one of the following two criteria: (1) Landings of 100 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) landings of 250 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. To qualify for a limited access incidental catch permit (possession limit of 55,000 lb or 25 mt), the vessel would have been required to currently possess a permit for squid, mackerel, butterfish, and/or whiting and have landed at least 55,000 lb (25 mt) of herring in any calendar year between January 1, 1988, and December 31, 2002.

Under Alternative 3, 57 vessels (38 active) would qualify for limited access directed fishery permits to fish in all management areas. There were no additional vessels that would qualify for the limited access directed fishery permit to fish in Areas 2/3 only. Another 3 vessels (none active) would qualify for the limited access incidental catch permit (possession limit of 55,000 lb or 25 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 3 would have required a vessel to currently possess a herring permit and have landed at least 100 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. For Areas 2/3, a moratorium on the issuance of vessel permits would have been established on the date Amendment 1 measures were implemented. Under the moratorium, a vessel would have been deemed eligible for a directed fishery permit for Area 2/3 if it possessed a herring permit (Category 1 or 2) on or before September 18, 2003, and had landed at least 1 pound of fish in any New England or Mid-Atlantic fishery prior to September 18, 2003. Alternative 3 would have established a controlled access program for Area 2/3 that would be implemented when landings reached 75 percent of the TAC specified for either of the management areas. Once that trigger was reached, a more restrictive limited access program would be implemented at the start of the next fishing year that would require a vessel to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. To qualify for a limited access incidental catch permit (possession limit of 55,000 lb or 25 mt), the vessel would have been required to currently possess a permit to fish for squid, mackerel, butterfish, and/or whiting and have landed at least 100 mt of herring between January 1, 1988, and December 31, 2002.

Under Alternative 4, 38 vessels (31 active) would qualify for limited access directed fishery permits to fish in all management areas, and 7 additional vessels (2 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only (after the trigger was reached). Another 14 vessels (4 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all areas in Alternative 4 would have required that a vessel to currently possess a herring permit and have landed at least 500 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. Areas 2/3 would be subject to the same moratorium on permits and subsequent controlled access program as outlined in Alternative 3. The incidental catch permit requirements and limits under this alternative are also identical to those under Alternative 3.

Under Alternative 5, 29 vessels (25 active) would qualify for limited access directed fishery permits to fish in all management areas, and 13 (6 active) additional vessels would qualify for limited access directed fishery permits to ish in Areas 2/3 only. Another 38 vessels (11 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 5 would have required that a vessel must currently possess a herring permit and meet one of the following two criteria: (1) Demonstrated landings of 500 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) demonstrated landings of 500 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and meet one of the following two criteria: (1) Demonstrated landings of 100 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) demonstrated landings of 250 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. This alternative would establish an additional Area 1A Historic Inshore

Priority Permit for vessels that met one of the following two criteria: (1) Possession of a limited access directed fishery permit, and demonstrated landings of at least 4,000 mt of herring from Area 1A in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) possession of a limited access directed fishery permit, and demonstrated landings of at least 2,000 mt of herring from Area 1A in any consecutive 12 months between September 16, 1999, and December 31, 2001. When 50 percent of the Area 1A TAC was projected to have been caught in any fishing year, access to Area 1A would have been limited to vessels that possess an Historic Inshore Priority Permit for the remainder of the fishing year (or until the remainder of the Area 1A TAC is caught). The incidental catch permit requirements and limits under this alternative are identical to those under Alternative 2.

Under Alternative 6, 32 vessels (21 active) would qualify for limited access directed fishery permits to fish in all management areas, and 13 additional vessels (12 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only. Another 39 vessels (12 active) would qualify for limited access incidental catch permits (possession limit of 55,000 lb or 25 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 6 would have required a vessel to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and September 16, 1999. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. The incidental catch permit requirements are identical to those specified under Alternative 3.

Under Alternative 7, 23 vessels (18 active) would qualify for limited access directed fishery permits to fish in all management areas, and 22 additional vessels (15 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only. Another 37 vessels (13 active) would qualify for limited access incidental catch permits (possession limit of 33,000 lb or 15 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 7 would have required a vessel to currently possess a herring permit and have landed at least 500 mt of herring in any one calendar year between January 1, 1988, and September 16, 1999. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. To qualify for a limited access incidental catch permit, the vessel would have been required to currently possess a permit to fish for squid, mackerel, butterfish, and/or whiting and have landed at least 15 mt (33,000 lb) of herring in any calendar year between January 1, 1993, and December 31, 2002.

The FSEIS analyzed active qualifiers and used two measures to estimate how much herring those qualifiers might land in the future under the various management alternatives. The first measure multiplies a vessel's highest number of days-at-sea per year observed from 2002 through 2004 by their average metric tons landed per day-at-sea over the same time period. The sum of the products are reported to provide a first level estimation of what the group of vessels that qualify under a given alternative are likely to land. The second measure is similar to the first except that days-at-sea are multiplied by the highest yearly average metric tons per day-at-sea observed over the 2002 to 2004 time period. The sum of these vessel-level products represents a second-level estimation of potential catch by alternative. This second measure provides an estimate of potential landings under the assumption that vessels produce at their highest average catch rates and at their highest level of effort observed in recent years. These two potential catch measures are used to evaluate future profits under the various alternatives.

One way to consider the economic impacts of the alternatives is to see how those alternatives might affect landings, because landings potentially relate to profits, depending on the the TACs that are established. For 28 active vessels that qualify for all areas under the proposed alternative, the potential catch of the limited access fleet ranges from 161,030 to 198,710 mt. The additional active vessel that qualifies for Area 2/3 increases the potential catch slightly, though the specific amount of the increase cannot be provided in the document due to data confidentiality restrictions.

The Proposed Action ranks in the middle of the alternatives relative to the potential catch in Area 1A. Four alternatives (no action and Alternatives 2, 3, and 4) would result in higher potential catch, and three alternatives (Alternatives 5, 6, and 7) would result in lower potential catch from the area. When the catch from all of the management areas is evaluated, there are six alternatives (no action, and Alternatives 2, 3, 4, 6, and 7) that result in potential catch higher than the Proposed Action. The highest potential catch is associated with the no-action alternative, at 170,087 to 209,368 mt. Alternative 5 has a lower potential catch than the Proposed Action.

In terms of number of vessels, the Proposed Action qualifies the fewest vessels into the limited access directed fishery (34 vessels). This result differs for the two types of limited access directed fishery permits. Four alternatives would qualify more vessels than the Proposed Action to fish in any of the management areas, while two would qualify fewer vessels. The fact that the Proposed Action is the most restrictive in terms of the total number of vessels that qualify for the directed fishery is due to the nature of the Area 2/3 qualification criteria. The Area 2/3 criteria specified in the Proposed Action are the most restrictive of the alternatives considered due to the selection of 1993 as a start date for the qualification period (versus 1988). Only three additional vessels would qualify for limited access directed fishery permits in Areas 2/3.

The majority of vessels that would not qualify for a limited access permit under the Proposed Action have not been active in the herring fishery in recent years, and in some cases, for many years. Some have switched to other fisheries, including those targeting Atlantic mackerel and squid. The limited access incidental catch permit would likely accommodate the catch of herring on these vessels and allow them to continue normal operations in other fisheries. This should help to mitigate the impacts of not qualifying for a directed fishery permit in Areas 2/3. The Proposed Alternative is the least restrictive alternative for the limited access incidental catch permit that was considered in this amendment.

Purse Seine/Fixed Gear Only

The impact of this measure was evaluated by considering how many of the vessels that would qualify for the limited access directed fishery permit to fish in all management areas utilize midwater trawl gear. The analysis showed that a total of 22 vessels used midwater trawl gear (6 used single trawls and 16 used pair trawls) and would be affected by the measure that would establish Area 1A from June through September as a PS/FG area. Amendment 1 noted that landings data

show that 4 of the midwater trawl vessels and 13 of the pair trawl vessels actively fished in Area 1A during the June through September period. To compensate for potential losses from not being able to fish in the PS/FG area, the excluded vessels could fish in other management areas or be re-rigged to utilize purse seine gear in Area 1A during the time of the restriction.

Four of the alternatives, in addition to the proposed action, included a measure to establish a PS/FG area. Under alternatives 3, 4, and 6, vessels using single and paired midwater trawls would have been prohibited from fishing for Atlantic herring in Area 1A east of 69° W. long. from June 1 - September 30 of each fishing year. Under the Proposed Action and Alternative 7, the purse seine/fixed gear only area would be for all of Area 1A, from June 1 - September 30 of each fishing year.

In terms of numbers of vessels, Alternative 3 would result in the greatest number of vessels excluded from the respective gear restricted area. However, while the Proposed Action and Alternative 7 impact fewer vessels, the impacts of the PS/FG measure are the highest in these alternatives because the gear restricted area is much larger for these alternatives (all of Area 1A versus 1A east of 69° W. long). This means that a greater share of the midwater trawl vessels' landings from Area 1A could be lost. This impact is especially important during the summer months, when demand for herring to be used as lobster bait is at its peak.

Of all the alternatives, the gear restriction in the Proposed Action would likely result in the greatest economic loss when the impacts of this measure is considered independent of the other measures and other alternatives in the document. This is the case even though Alternative 7 includes the identical management measure. The reason for this is that more midwater trawl vessels qualify for limited access directed fishery permits in Area 1 under the Proposed Action than under Alternative 7, and consequently, more vessels may incur losses due to the gear restricted area. However, when compared to Alternative 7 and considered in the context of the limited access program, the overall impacts of this measure are mitigated to some extent. There are midwater trawl vessels that qualify for limited access under the Proposed Action that would be negatively impacted by the gear restriction. However, under Alternative 7 they would be restricted entirely from Area 1A because they would not qualify under the limited access program, resulting in a comparatively greater negative impact. These vessels are less impacted by the Proposed Action even though it appears that the impacts from the gear restricted area are greater. This is because they can fish in Area 1 from October to May under the Proposed Action when they would not have qualified at all for the directed fishery in Area 1 under other alternatives (Alternative 7, for example).

During 2002 through 2004, the affected midwater trawl vessels landed an average of 12 million lb of herring (5,472 mt, worth about $892,000), and the pair trawl vessels landed 47 million lb of herring (21,298 mt, worth about $3,472,000) per season (June through September) from Area 1A. These landings represent 68 percent and 60 percent of the total Area 1A landings by these single and paired midwater trawl vessels, respectively. The midwater trawl vessel landings ranged from 586,429 lb to 7.4 million lb (266 to 3,372 mt), and the pair trawl vessel landings ranged from 190,416 lb to 7.2 million lb (90 to 3,263 mt). To compensate for potential losses, midwater trawl vessels would have the choice to either seek alternative fishing grounds or fisheries and/or to re-rig to purse seine in Area 1A during the time of the restriction. All of the above choices have financial costs.

Open Access Incidental Catch Permit

In addition to the Proposed Action, Amendment 1 considered another alternative for the open access incidental catch permit that would have allowed vessels that did not qualify for a limited access permit to obtain an open access incidental catch permit, which would restrict the vessel to a possession limit of 11,000 lb (5 mt) of herring per trip. This alternative would have provided a small added economic benefit to those vessels that received such a permit.

Vesssel Upgrade Restrictions

With respect to vessel upgrade restrictions, Amendment 1 included two alternatives to the Proposed Action. One, no action, would have allowed herring vessels to increase in size up to 165 ft (50.3 m) in length overall, 750 GRT (680.4 mt), and 3,000 horsepower. Alternative 3 would have allowed a vessel to increase its HP only once, whether through refitting or replacement. Such an increase could not have exceeded 50 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, GRT, and NT could have been increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size could not exceed 25 percent of the vessel's baseline specifications, as applicable.

For some fishery participants (particularly those if any with immediate plans to upgrade vessels), the proposed vessel upgrade restrictions may constrain future business opportunities. However, the restrictions included in this measure will reduce the likelihood of further capitalization of the industry. Introducing this measure is also likely to help sustain the viability of a diverse fleet.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 18, 2006.

Samuel D. Rauch, III

Deputy Assistant Admisitrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition of ''Category 1 herring vessel'' is removed, the definitions of ''Atlantic herring carrier'' and ''Midwater trawl'' are revised, and the definition of ''Limited access herring vessel'' is added to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring carrier means a fishing vessel that is issued a herring permit, and that does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

* * * * *

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

* * * * *

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

* * * * *

3. In § 648.4, paragraphs (a)(10) and (c)(2)(vi) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) *Atlantic herring vessels*—(i) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6 (a)(2).

(ii) *Atlantic herring carrier vessels.* An Atlantic herring carrier vessel must have been issued and have on board a herring permit and a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not possess, transfer, or land any species except for Atlantic herring; may not conduct fishing activities or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days.

(iii) *Vessel size limitation.* A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥ 165 ft (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6 (a)(2).

(iv) *Limited access herring permits.* (A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*) – (*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *All Areas Limited Access Herring Permit.* A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Areas 2 and 3 Limited Access Herring Permit.* A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Limited Access Incidental Catch Herring Permit.* (i) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(ii) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraphs (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH).* A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for All Areas and Areas 2 and 3 Permits.* (*i*) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history.

(*2*) *Landings criteria for the All Areas Limited Access Herring Permit.* (*i*) The vessel must have landed and sold at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section until December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as supported by the required NMFS dealer reports or signed dealer receipts.

(*3*) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit.* (*i*) The vessel must have landed and sold at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels

that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section until December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH.* A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria.* (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(ii) The vessel meets the vessel replacement requirements criteria specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section.

(*2*) *Landings criteria for Incidental Catch Limited Access Herring Permit.* (*i*) The vessel must have landed and sold at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section until December 31, 2004.

(*3*) *CPH.* An person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions.* (*1*) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of this section, more than 12 months after the effective date of the final regulations establishing these permits, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(*2*) An applicant who submits written proof that an eligible vessel was sold, with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(*3*) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility would establish the size baseline against which future vessel size limitations would be evaluated.

(K) *Limited access permit restrictions.* [Reserved].

(L) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section. Furthermore, vessel owners who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting .

(O) *Appeal of denial of permit.*—(1) *Eligibility.* Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(2) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is

pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(v) *Open access herring permit.* A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

* * * * *

(c) * * *

(2) * * *

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

* * * * *

4. In § 648.6, paragraph (a)(2) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) (i) *At-sea mackerel processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring processing permit.* A vessel of the United States, including a vessel that is > 165 ft (50.3 m) LOA, or > 750 GRT (680.4 mt), is eligible to obtain an Atlantic herring processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive or process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring processing permit.

* * * * *

5. In § 648.7, paragraph (b)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) *IVR system reports*—(i) *Atlantic herring owners or operators.* The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (A) and (B) of this paragraph. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12:00 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued an open access permit for Atlantic herring that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

* * * * *

6. In § 648.9, paragraph (c)(2)(i)(C) is revised to read as follows:

§ 648.9 VMS requirements.

(c) * * *

(2) * * *

(i) * * *

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

* * * * *

7. In § 648.13, paragraph (f) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) *Atlantic herring.* With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized below:

(1) *Personal use as bait.* (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to transfer fish, and reports all transfers on the Fishing Vessel Trip Report. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an authorized herring carrier vessel up to the possession limit specified in § 648.204, except no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer

Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104–297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2), up to the possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

* * * * *

8. In § 648.14, paragraph (bb)(8) is removed and reserved; paragraphs (a)(166)-(169), (bb) (7), (bb)(10)–(12), (bb)(14)–(18), (bb)(20), and (bb)(24)–(26) are revised; and paragraphs (bb)(19), and (bb)(21)–(23) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a limited access vessel as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a limited access herring vessel, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a limited access herring vessel as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a limited access herring vessel, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

* * * * *

(bb) * * *

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell ≤ 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land ≤ 2,000 lb (907.2 kg) of Atlantic herring per day in or from a management area closed pursuant to § 648.201(a), if the vessel has been issued a valid Atlantic herring permit.

(8) Reserved

* * * * *

(10) Transit an area of the EEZ that is subject to a closure or other restraints on fishing to fishing for Atlantic herring pursuant to § 648.201(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

* * * * *

(14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to § 648.206(b)(24).

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if the vessel is a limited access herring vessel as defined in § 648.2.

(16) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.

(17) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

(18) If the vessel is a limited access herring vessel and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(19) If the vessel is a limited access herring vessel and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hours prior to departing on a trip for the purposes of observer deployment.

(20) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(1) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

(21) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(22) If a limited access herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(23) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000–lb (907.2–kg) limit specified in § 648.86(a)(3)(ii)(A)(1) with more than 2,000 lb (907.2 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(24) Fish for herring in Area 1A between June 1 and September 30 with any gear other than purse seines or fixed gear.

(25) Transit Area 1A between June 1 and September 30 with more than 2,000 lb (907.2 kg) of herring on board with mid water trawl gear not properly stowed as per § 648.23(b).

(26) Possess or land more herring than is allowed for by the vessel's Atlantic herring permit.

* * * * *

9. In § 648.15, paragraphs (d)(1) and (e) are revised to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from limited access herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement

officials must be given access to inspect the haddock.

* * * * *

(e) *Retention of haddock by limited access herring vessels.* All limited access herring vessels must retain all the haddock that they catch.

10. In § 648.80, paragraphs (d)(4)through (6) and (e)(4) through (6) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(4) The vessel does not fish for, possess or land NE multispecies, except that limited access herring vessels may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Limited access herring vessels may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, limited access herring vessels must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All limited access herring vessels on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

(e) * * *

(4) The vessel does not fish for, possess or land NE multispecies, except that limited access herring vessels, as defined in § 648.2, may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Limited access herring vessels may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, limited access herring vessels must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All limited access herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

11. In § 648.83, paragraph (b)(4) is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(4) Limited access herring vessels may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86 (k). Such fish may not be sold for human consumption.

* * * * *

12. In § 648.85, paragraph (d) is revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(d) *Incidental catch allowance for limited access herring vessels.* The incidental catch allowance for limited access herring vessels is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to ′ 648.90(a) for a particular multispecies fishing year.

13. In § 648.86, paragraphs (a)(3), and (k) are revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(3)(i) *Incidental catch allowance for limited access herring vessels.* Limited access herring vessels may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock Incidental Catch Cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, defined below, are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for all limited access herring vessels, regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GB/GOM HERRING EXEMPTION AREA

Point	N. lat.	W. long.
1	41° 33.05′	70° 00′
2	41° 20′	70° 00′
3	41° 20′	69° 50′
4	41° 10′	69° 50′
5	41° 10′	69° 30′
6	41° 00′	69° 30′
7	41° 00′	68° 50′
8	39° 50′	68° 50′
9	39° 50′	66 °40′
10	40 °30′	66° 40′
11	40 °30′	64 °44.34′
12	41 °50′	66 °51.94′
13	41 °50′	67 °40′
14	44 °00′	67 °40′
15	44 °00′	67 °50′
16	44 °10′	67 °50′
17	44 °27′	67 °59.18′
18	ME, NH, MA Coastlines	
19	41 °33.05′	70° 00′

(*2*) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1 April 30), which differs from the herring fishing year (January 1 December 31). If the haddock catch cap is attained by the limited access herring fishery, the 2,000–lb (907.2–kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap would be specified for the period May 1, 2007 April 30, 2008. If the catch of haddock by limited access herring vessels reached the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000–lb (907.2–kg) limit on possession or landing herring in the GOM/GB Herring Exemption Area would extend through April 30, 2007, at which time the 2007 catch cap would go into effect.

* * * * *

(k) *Other regulated NE multispecies possession restrictions for limited access herring vessels.* Limited access herring vessels may possess and land up to 100 lb (45 kg) of other regulated NE multispecies on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

14. Subpart K is revised to read as follows:

Subpart K—Management Measures for the Atlantic Herring Fishery

Sec.

648.200 Specifications.
648.201 Closures and TAC controls.
648.202 Season and area restrictions.
648.203 Gear restrictions.
648.204 Possession restrictions.
648.205 VMS requirements.
648.206 Framework provisions.
648.207 Herring research quota (RQ).

Subpart K—Management Measures for the Atlantic Herring Fishery

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve (if any), and the amount to be set aside for the research quota (RQ from 0 to 3 percent of the TAC from any management area). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.201(f). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT will meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3–year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming three years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3–year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC), as adjusted by subtracting an estimate of the expected Canadian New Brunswick fixed gear and GB herring catch.

(2) OY shall not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3–year period. The

Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3–year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and shall publish notification in the **Federal Register** proposing 3–year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments.* (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

(f) *Management areas.* The specifications process establishes TACs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 42°53′14'' N. lat., 67° 44′35'' W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58′	70°00′.
2	42°38′	70°00′.
3	42°53′	69°40′.
4	43°12′	69°00′.
5	43°40′	68°00′.
6	43°58′	67°22′ (the U.S.-Canada Maritime Boundary).

(2) *Management Area 2 (South Coastal Area):* All waters west of 70° 00′ W . long., south of 41°39′ N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank):* All U.S. waters east of 70°00′ W. long. and southeast of the line that runs from a point at 70°00′ W. long. and 41°39′ N. lat., northeasterly to the Hague Line at 42°53′14'' N. lat., 67°44′35'' W. long.

§ 648.201 Closures and TAC controls.

(a) If NMFS determines that catch will reach 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) The percent of the TAC that triggers imposition of the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section may be adjusted through the specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with ≤ 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) A vessel may land in an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the **Federal Register**, without further opportunity for public comment.

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(g) 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area !A (weirs and stop seines) that occur west of 44° 36.2′ N. Lat. and 67° 16.8′ W. Long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the TAC allocation for Area 1A.

§ 648.202 Season and area restrictions.

Purse Seine/Fixed Gear Only Area (PS/FG). Limited access herring vessels may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwter trawl gear is

stowed pursuant to § 648.23(b). Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 May 31.

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from or in the EEZ from any herring management area, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit is authorized to fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(5) Herring vessels may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Both vessels involved in a pair trawl operation must be issued valid permits to fish for, possess or land Atlantic herring harvested from any management area. Both vessels must be issued the permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation.

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel (with the exception of fixed gear fishermen), must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. At least 1 hour prior to leaving port, the owner or authorized representative of a herring vessel that is required to use VMS as specified in this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the herring fishery. VMS codes and instructions are available from the Regional Administrator upon request.

§ 648.206 Framework provisions.

(a) *Framework adjustment process.* In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the **Federal**

Register based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the TAC;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) Any other measure currently included in the FMP;(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) TAC set-aside amounts, provisions, adjustments; and

(29) In-season Adjustments to TACs.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

§ 648.207 Herring research quota (RQ).

(a) NMFS shall publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to herring research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(d) The Northeast Fisheries Science Center Director (NEFSC Director) and the NOAA Grants Office shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the NEFSC Director determines that the allocated research quota cannot be utilized by a project, the Northeast Science and Research Director shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified.

(g) Whenever possible, research proposals will be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside would be released back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3–year specifications. In this case, NMFS would release the unutilized portion of the set-aside back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS would be authorized to release the unutilized portion of the set-aside back to its respective management area(s) for all 3 fishing years covered by the specifications.

(h) Any quota reallocated under subparagraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Individual research projects may apply for the use of more than one herring research set-aside allocation. Proposals may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside should be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

[FR Doc. 06–8263 Filed 9–26–06; 8:45 am]

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Notices

Federal Register

Vol. 71, No. 187

Wednesday, September 27, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Finding of No Significant Impact

AGENCY: Commodity Credit Corporation, USDA.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a Finding of No Significant Impact (FONSI) with respect to the implementation of the Emergency Forestry Conservation Reserve Program (EFCRP). EFCRP provides cost-share assistance for cleanup and replanting for those owners or operators of non-industrial forest land and school trust land that experienced a loss of 35 percent or more of merchantable timber directly related to hurricanes that occurred during the 2005 calendar year.

DATES: This action is effective 30 days after publication of this Notice.

ADDRESSES: The Final Programmatic Environmental Assessment and FONSI may be reviewed at *http://www.fsa.usda.gov/dafp/cepd/epb/assessments.htm*. Written comments should be directed to Mike Linsenbigler, USDA/FSA/CEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513. Electronic comments may be submitted to *EFCRP@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: Consistent with the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321, *et seq.*) (NEPA), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA's policy and procedures (7 CFR part 799), the United States Department of Agriculture, Farm Service Agency (FSA), on behalf of the CCC, prepared a Programmatic Environmental Assessment for the Emergency Forestry Conservation Reserve Program (EFCRP) to evaluate the environmental consequences associated with the 2005 hurricane season. During the course of the 2005 hurricane season, one of the worst on record, five hurricanes made landfall on the United States (U.S.) between July and October 2006: Dennis, Katrina, Ophelia, Rita, and Wilma. Each of these caused damage to infrastructure, homes, personal property, and agricultural resources, including privately owned forests. The purpose of EFCRP is to provide cost-share assistance for cleanup and replanting for those owners or operators of non-industrial forest land and school trust land that experienced a loss of 35 percent or more of merchantable timber directly related to hurricanes that occurred during the 2005 calendar year.

The EFCRP was authorized by Section 107 of Division B, Title I, of the Department of Defense Appropriations Act of 2006, H.R. 2863, signed by the President on December 30, 2005. The program applies to the States of Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas.

Preferred Alternative

Implementation of the Preferred Alternative will provide cost-share assistance for cleanup and replanting for owners or operators of non-industrial private forest land (including school trust lands) who experienced a loss of 35 percent or more of merchantable timber directly related to hurricanes Katrina, Ophelia, Rita, Dennis, and Wilma during the 2005 calendar year.

Producers will be provided financial assistance for the following nine eligible conservation practices: CP 35A and CP 35B: New and Existing Longleaf Pine; CP 35C and CP 35D: New and Existing Bottomland Hardwood; CP 35E and CP 35F: New and Existing Softwood; CP 35G and CP 35H: New and Existing Upland Hardwood; and Mixed Existing, CP35I. Each EFCRP contract would have a conservation plan developed by a professional forester. There would be a status review by FSA on each contract until the Practice is established.

Reasons for Finding of No Significant Impact

In consideration of the analysis documented in the Programmatic Environmental Assessment for the Emergency Forestry Conservation Reserve Program and the reasons outlined in this FONSI, the preferred alternative would not constitute a *major* State or Federal action that would significantly affect the human environment. Therefore, an Environmental Impact Statement need not be prepared. This determination is based on the following:

1. Both beneficial and adverse impacts of implementing the preferred alternative have been fully considered within the Programmatic Environmental Assessment for the Emergency Forestry Conservation Reserve Program. The beneficial impacts outweigh any adverse impacts. Adverse cumulative impacts are expected to be minor as implementation of the preferred alternative will cause very little if any adverse impacts on the area of potential effects and the human environment.

2. The preferred alternative would not significantly affect public health or safety. Further, the removal of downed timber as a result of the preferred alternative would reduce fire fuel, minimizing the potential for wildfires to threaten public safety.

3. The preferred alternative would not significantly affect any unique characteristics which includes historic and cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The preferred alternative does not involve effects to the quality of the human environment that are likely to be highly controversial. Implementing the preferred alternative will reduce contamination of drinking water, improve air quality, and further recreational and socioeconomic benefits.

5. The preferred alternative would not impose highly uncertain, or involve unique or unknown risks.

6. The preferred alternative would not establish a precedent for future actions with significant effects and does not represent a decision in principle about a future consideration. The preferred alternative is intended to assist owners or operators of non-industrial private forest land in recovering from the 2005 hurricane damage. Any future projects that are similar in nature will need to be reviewed on a case-by-case basis to determine their individual potential for impact on the human environment.

7. The preferred alternative is not related to other actions with individually insignificant but cumulative significant impacts. The Environmental Consequences section of the Programmatic Environmental Assessment for the Emergency Forestry Conservation Reserve Program discusses potential cumulative impacts of implementing the preferred alternative. Cumulative impacts of implementing the preferred alternative were determined to not be significant.

8. The preferred alternative would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources. Consultation with the State Historic Preservation Offices was completed. Site-specific cultural resource considerations will be addressed during the environmental review process for individual contracts.

9. The preferred alternative would not have adverse effects on threatened or endangered species or designated critical habitat. In accordance with section 7 of the Endangered Species Act, 16 U.S.C. 1536, the effects of implementing the preferred alternative on threatened and endangered species and designated critical habitat were addressed in the Programmatic Environmental Assessment for the Emergency Forestry Conservation Reserve Program. Informal consultation with the U.S. Fish and Wildlife Service was completed.

10. The preferred alternative does not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Determination

Consistent with the National Environmental Policy Act, 40 CFR part 1502.4, ''Major Federal actions requiring the preparation of Environmental Impact Statements,'' 7 CFR part 799, ''Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality,'' and 40 CFR Parts 1500–1508, I find that neither the proposed action nor any of the alternatives analyzed constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared.

Signed in Washington, DC on September 21, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–15855 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0029]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on October 12–13, 2006, to review and discuss the following issues: (1) Using Risk to Direct In-Plant Inspection Activities in Processing Assignments, and (2) Using Risk in Slaughter Operations. Two subcommittees will also meet on October 12, 2006, to work on these issues after discussion during the full committee session.

DATES: The full Committee will hold a public meeting on Thursday, October 12, and Friday, October 13, 2006, from 8:30 a.m. to 2 p.m. Subcommittees will hold open meetings on Thursday, October 12, 2006, from 2 p.m. to 6 p.m.

ADDRESSES: All Committee meetings will take place in the conference room at the south end of the U. S. Department of Agriculture (USDA) cafeteria located in the South Building, 1400 Independence Avenue, SW., Washington, DC 20250. A meeting agenda is available on the Internet at the NACMPI Web site, *http://www.fsis.usda.gov/about_fsis/nacmpi/index.asp.* The NACMPI meeting agenda, together with information and resource materials on risk-based inspection, is also available on the Internet at the Risk-based Inspection System Web site, *http://www.fsis.usda.gov/Regulations_&_Policies/Risk_Based_Inspection/index.asp.* FSIS welcomes comments on the topics to be discussed at the NACMPI public meeting. Comments may be submitted by any of the following methods:

Electronic mail: NACMPI@fsis.usda.gov.

Mail, including floppy disks or CD–ROM's: Send to Advisory Committee Specialist, United States Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue, SW., Mail Drop 405 Aerospace, Washington, DC 20250.

H*and-or courier-delivered items:* Deliver to Loraine Cannon at 901 D Street, SW., Washington, DC. To deliver these items, the building security guard must first call (202) 690–6520.

Facsimile: Send to Loraine Cannon, (202) 690–6519.

All submissions received must include the Agency name and docket number FSIS–2006–0029.

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 720–3884, or e-mail *robert.tynan@fsis.usda.gov* and Loraine Cannon for meeting information at (202) 690–6647, FAX (202) 690–6519, or e-mail *NACMPI@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify Loraine Cannon no later than September 26, 2006, at the numbers above or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2005, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act [21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)] and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act [21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)].

The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors and marketers from the meat, poultry and egg product industries; State and local government officials; and academia. The current members of the NACMPI are: Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Mr. Darin Detwiler, Lake Washington School District; Mr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, Public Policy Consultant; Mr. Mike Finnegan, Montana Department of Agriculture; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Andrea Grondahl, North Dakota Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Mr. Michael Kowalcyk, Safe

Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats, Inc.

The Committee has two subcommittees to deliberate on specific issues and make recommendations to the whole Committee. The Committee makes recommendations to the Secretary of Agriculture.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room, 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250, and posted on the Agency's NACMPI Web site, *http://www.fsis.usda.gov/about_fsis/nacmpi/index.asp.*

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done in Washington, DC on: September 21, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–15859 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0028]

Risk-Based Inspection System

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a public meeting on October 10–11, 2006, to review and discuss the following issues: (1) Measuring product inherent risk for risk-based inspection, and

(2) Measuring establishment risk control for risk-based inspection. In addition, FSIS will begin a discussion on how these two measures of risk might be used to implement a Risk-Based Inspection System (RBIS). FSIS will use Resolve, a national non-profit organization, to assist with the stakeholder input process. Resolve specializes in mediating, facilitating, and building consensus on solutions to scientifically complex public policy issues, including those in the areas of food safety, agriculture, and public health.

DATES: FSIS will hold a public meeting on Tuesday, October 10, and Wednesday, October 11, 2006, from 9:30 a.m. to 5:30 p.m.

ADDRESSES: The public meeting will be held at George Mason University, 3401 N. Fairfax Drive, Arlington, VA 22201. The specific room information for the meeting, directions to the site, and the agenda will be posted on the risk-based inspection (RBI) Web site at *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.* The meeting will be broadcast electronically for viewing in selected locations in other parts of the country. Those locations and information on the telecasts will also be posted on the RBI Web site. Members of the public are required to pre-register for the meeting (see Background). Online registration information is also located on the RBI Web site above.

FSIS welcomes comments on the topics to be discussed at the public meeting. The Agency's technical papers relating to (1) Measuring product inherent risk for risk-based inspection, and (2) Measuring establishment risk control for risk-based inspection are posted at the FSIS Web site above. Comments on these papers may be submitted by any of the following methods through October 27, 2006:

Electronic mail: An e-mail box has been established specifically for RBI comments for the public meeting on October 10–11. Comments can be submitted to *riskbasedinspection@fsis.usda.gov.*

Mail, including floppy disks or CD–ROM's: Send to Ellyn Blumberg, RBI Public Meeting, United States Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue, SW., Mail Drop 405 Aerospace, Washington, DC 20250.

Hand-or courier-delivered items: Deliver to Ellyn Blumberg at 901 D Street, SW., Washington, DC. To deliver these items, the security guard must first call (202) 690–6520.

Facsimile: Fax RBI comments to (202) 690–6519.

All submissions received must include the Agency name and docket number FSIS–2006–0028. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.*

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 720–3884 or e-mail *robert.tynan@fsis.usda.gov.* Contact Ellyn Blumberg for meeting information at (202) 720–0087, Fax (202) 690–6519, or e-mail *ellyn.blumberg@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify the agency contacts no later than September 26, 2006, at the numbers above or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the U.S. Department of Agriculture (USDA) responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged. FSIS is accountable for protecting the lives and well-being of 295 million U.S. citizens and millions more around the world.

To meet the realities of food safety and public health challenges, FSIS is working to make its inspection system

more risk-based and to continue to implement science-based policies. Although the Agency acknowledges that some types of meat and poultry products pose greater health risks than others, and some establishments control risks better than others, under the current system of processing inspection, a Consumer Safety Inspector visits every plant at least once every shift to perform a variety of verification procedures scheduled by the Performance Based Inspection System (PBIS). PBIS schedules inspection procedures the same way in all processing plants, regardless of the particular food safety hazard associated with the products produced and processes performed at one plant versus another.

In July 2004, the Agency outlined the basic features of a predictive model that would permit FSIS to improve resource allocation by considering the inherent risks and risk control effectiveness of the many meat and poultry establishments under Federal inspection. Since that time, FSIS has continued developing and refining these ideas. In November 2005, FSIS addressed the National Advisory Committee on Meat and Poultry Inspection (NACMPI) on Agency progress toward a RBIS. In May 2006, the Agency again addressed NACMPI—this time on ideas the Agency has on measuring establishment risk control effectiveness for RBI.

Reductions in the number of illnesses attributed to the consumption of adulterated meat and poultry products can be achieved by placing greater inspection and verification emphasis on establishments whose processes, owing to the nature and volume of their production, require greater control of the risks. FSIS believes that it can improve public health by dedicating fewer inspection resources to processing establishments that produce products that present low inherent risk and that exercise effective risk control, and shifting those resources towards processing establishments that produce products that present high inherent risk and that have less effective risk control.

At this meeting, FSIS will present some ideas about how the Agency can develop measures of inherent food safety risk for federally-inspected meat and poultry processing establishments and to solicit stakeholder input on the subject. The Agency will also accept stakeholder input on how to measure establishment control of risk. FSIS previously presented information on this topic at a meeting of NACMPI last May. Finally, FSIS will accept stakeholder input on some initial concepts on how the two measures of risk might be used to implement RBIS.

FSIS is using Resolve, a national non-profit organization, to assist with the stakeholder input process. Resolve specializes in mediating, facilitating, and building consensus on solutions to scientifically complex public policy issues, including those in the areas of food safety, agriculture, and public health.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions through October 27, 2006. The comments and the official transcript of the meeting, when they become available, will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.* All comments received in response to this notice will be considered part of the public record.

Members of the public are required to pre-register for the meeting. Online registration information is located at *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/. FSIS will also make copies* of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: September 21, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–15866 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service Action: Notice of Meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Wednesday, October 25, 2006. The meeting is scheduled to begin at 6:30 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include: Trails Planning, Monitoring Plan and Pearl Creek Strategy Subcommittees reports and recommendations.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the October 25th meeting by sending them

to Designated Federal Official Paul Matter at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Paul Matter; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: September 29, 2006.

Dallas Emch,

Forest Supervisor.

[FR Doc. 06–8278 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Draft Supplemental Watershed Plan No. 1 and Environmental Assessment Plum Creek Watershed, Rehabilitation of Flood Retarding Structure (FRS) #18

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Availability (NOA) of the Plum Creek FRS #18 Draft Supplemental Watershed Plan and Environmental Assessment.

SUMMARY: The Natural Resources Conservation Service, U.S. Department of Agriculture, Kentucky State Office, gives notice that a draft supplemental watershed plan/environmental assessment for the rehabilitation of Plum Creek FRS #18 is now available for public review and comment.

FOR FURTHER INFORMATION CONTACT: Jacob Kuhn, Acting State Conservationist, Natural Resource Conservation Service, 771 Corporate Drive, Suite 210, Lexington, KY 40503–5479, telephone (859) 224–7350.

SUPPLEMENTARY INFORMATION: This project was initiated due to the Kentucky Division of Water (KDOW) Office of Dam Safety issuance of a notice of violation (NOV) to the Plum Creek Watershed Conservancy District for Plum Creek FRS #18. Construction of FRS#18 was completed in 1957 under the Pilot Watershed Program and authorized by the Watershed Protection and Flood Prevention Act (PL 83–566). Due to changes in KDOW dam safety regulations and a pre-existing home below the dam, the KDOW is now requiring the dam to be upgraded to meet class C criteria (high hazard) or to remove the threat of flooding to the downstream home. The preferred alternative for this project is Alternative #2—demolition of the existing home and construction of a new elevated home on the same site. The proposed alternative would upgrade the dam to meet NRCS and KDOW current standards and criteria for a ''Significant'' or ''Moderate'' hazard (class B) dam and would replace the concrete riser and add a supplemental toe drain system to the dam.

FOR FURTHER INFORMATION CONTACT: Basic data developed during the environmental assessment are on file and may be reviewed by contacting Anita Arends, Resource Conservationist, telephone (859) 224–7354. Copies of the draft Plan/EA are available upon request. The public comment period will end 45-days after the date of this publication in the **Federal Register**.

Dated: September 20, 2006.

Jacob Kuhn,

Acting State Conservationist.

[FR Doc. E6–15776 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Pohick Creek Watershed Dam No. 4, Fairfax County, VA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Pohick Creek Watershed Dam No. 4, Fairfax County, Virginia.

FOR FURTHER INFORMATION CONTACT: M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287–1691, E-Mail *Denise.Doetzer@va.usda.gov.*

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Denise Doetzer, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting M. Denise Doetzer at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

M. Denise Doetzer,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials.]

[FR Doc. E6–15778 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

East Locust Creek Watershed, Sullivan County, MO

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: Roger A. Hansen, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Missouri, is hereby providing notification that a record of decision to proceed with the installation of the East Locust Creek Watershed Revised Plan is available. Single copies of this record of decision may be obtained from Roger A. Hansen at the address shown below.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, 601 Business Loop 70 West, Parkade Center, Suite 250, Columbia, Missouri, 65203, (573) 876–0901.

SUPPLEMENTARY INFORMATION: The project purposes are to provide a

reservoir capable of producing 7.0 million gallons of raw water per day for the residents and communities of north central Missouri; water-based recreational opportunities; and flood reduction of the floodplains of East Locust Creek, Little East Locust Creek, and the common floodplain area of Locust Creek. The planned works of improvement include: One multiple-purpose reservoir; a water intake structure; a raw water line; 22 small floodwater retarding structures; seven modified existing small floodwater retarding structures; five small sediment/debris basins; and recreational facilities.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: September 14, 2006.

Roger A. Hansen,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

[FR Doc. E6–15777 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC''), covering the period June 1, 2005, through May 31, 2006. Based on the withdrawal of the request for review with respect to one company, we are rescinding this administrative review, in part.

DATES: *Effective Date:* September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Laurel LaCivita, or Matthew Quigley, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–0650, (202) 482–4243, and (202) 482–4551, respectively.

Background

On June 2, 2006, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on FMTCs from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 32032 (June 2, 2006). We received timely requests for review from DongGuan ShiChang Metals Factory Ltd./Maxchief Investments, Ltd. (''Shichang''), Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd (collectively ''Feili''), and New-Tec Integration (Xiamen) Co., Ltd. (''New-Tec'').

On July 27, 2006, the Department published a notice of the initiation of the antidumping duty administrative review of FMTCs from the PRC for the period June 1, 2005, through May 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626, 42627 (July 27, 2006). On July 28, 2006, Shichang withdrew its request for an administrative review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Shichang, the only party to request a review for this company, withdrew its request within the 90-day limit. Therefore, we are rescinding this review of the antidumping duty order on FMTCs from the PRC covering the period June 1, 2005, through May 31, 2006, with respect to Shichang.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification Regarding APOs

This notice also serves as a 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 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–15862 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–826)

Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Notice of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 26, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Brazil. This administrative review covers V & M do Brasil, S.A. (VMB), a manufacturer/exporter of seamless pipe. The period of review (POR) is August 1, 2004, through July 31, 2005.

Based on our analysis of the comments received, we have made changes to certain currency conversion

variables, but the margin is unchanged from the preliminary results. The final weighted–average dumping margin for the reviewed firm is shown below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or David Kurt Kraus at (202) 482–0405 or (202) 482–7871, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2006, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results in this administrative review. *See Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 30379 (May 26, 2006) (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*. On June 26, 2006, we received a case brief from the sole respondent, VMB. No other party commented on the *Preliminary Results*. Based on our analysis of the comments received from VMB, we corrected errors in currency conversions. These corrections did not affect the margin. No party requested a public hearing.

Scope of the Order

The products covered by the order are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this antidumping duty order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple–certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple–certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe that, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order. Specifically excluded from this order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (OCTG') are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure

applications. Finally, also excluded from this order are redraw hollows for cold–drawing when used in the production of cold–drawn pipe or tube.

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

Changes Since the Preliminary Results

VMB stated in its case brief dated June 27, 2006, that the Department made a clerical error in the dumping margin calculation in the preliminary results. Specifically, VMB argued that the Department failed to convert U.S. expenses incurred and reported in Brazilian reais to U.S. dollars. *See* VMB Case Brief, dated June 27, 2006. Based on our analysis of the comments received, we concur with VMB and have corrected these errors. We note that the corrections did not change the margin for the final results. *See* Memorandum to the File from Helen M. Kramer, Team Leader, and David K. Kraus, Case Analyst: Analysis Memorandum for the Final Results of Administrative Review of Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: V & M do Brasil, S.A., dated August 31, 2006 (Analysis Memo).

Final Results Of Review:

As a result of our review, we determine that the following weighted–average margin exists for the period of August 1, 2004, through July 31, 2005:

Producer	Weighted–Average Margin (Percentage)
V & M do Brasil, S.A.	0.00 percent

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930 (the Act), and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of seamless pipe during the POR produced by VMB where VMB did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company or companies involved in the transaction. For a discussion of this clarification, see *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of seamless pipe from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the company covered by this review, the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company–specific rate from the final determination; (3) if the exporter is not a firm covered in this review or the investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise for the most recent period; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 124.94 percent, the ''All Others'' rate established in the less–than-fair–value investigation. *See Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the 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 these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–15857 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Notice of Extension of Time Limit for Final Results of New Shipper Reviews of Wooden Bedroom Furniture From the People's Republic of China

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

EFFECTIVE DATE: September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, 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) 482–6412.

Background

On July 6, 2006, the Department of Commerce (''the Department'') published the preliminary results of the new shipper reviews of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC''), covering the period June 24, 2004, through June 30, 2005, and the following exporters: Shenyang Kunyu Wood Industry Co., Ltd., Dongguan Landmark Furniture Products Ltd., Meikangchi (Nantong) Furniture Company Ltd, and WBE Industries (Hui-Yang) Co., Ltd. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of 2004–2005 Semi-Annual New Shipper Reviews and Notice of Final Rescission of One New Shipper Review,* 71 FR 38373 (July 6, 2006) (''*Preliminary Results*''). The final results are currently due on September 25, 2006.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''),

and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

As a result of extraordinarily complicated issues raised in the review segment, specifically the multiple issues raised with regard to the calculation of the surrogate financial ratios based on the financial statements of seven surrogate companies, it is not practicable to complete these new shipper reviews within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 45 days until November 9, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

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

Dated: September 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–15849 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update To Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject To an In-Quota Rate of Duty

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

EFFECTIVE DATE: September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–3146 or 6071, respectively.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2006, through June 30, 2006.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY [1]

Country	Program(s)	Gross [2] subsidy ($/lb)	Net [3] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.00	$0.00
Belgium	EU Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.30	0.30
Cyprus	EU Restitution Payments	0.00	0.00
Denmark	EU Restitution Payments	0.00	0.00
Finland	EU Restitution Payments	0.00	0.00
France	EU Restitution Payments	0.00	0.00
Germany	EU Restitution Payments	0.00	0.00
Greece	EU Restitution Payments	0.00	0.00
Hungary	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.00	0.00
Italy	EU Restitution Payments	0.00	0.00
Latvia	EU Restitution Payments	0.00	0.00
Lithuania	EU Restitution Payments	0.00	0.00
Netherlands	EU Restitution Payments	0.00	0.00
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Poland	EU Restitution Payments	0.00	0.00
Portugal	EU Restitution Payments	0.00	0.00
Spain	EU Restitution Payments	0.00	0.00
Sweden	EU Restitution Payments	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY [1]—Continued

Country	Program(s)	Gross [2] subsidy ($/lb)	Net [3] subsidy ($/lb)
U.K.	EU Restitution Payments	0.00	0.00

[1] This chart includes only those countries which exported articles of cheese to the United States during the 2nd Quarter, 2006. Luxembourg and Slovenia did not export articles of cheese to the United States during the 2nd Quarter, 2006.
[2] Defined in 19 U.S.C. 1677(5).
[3] Defined in 19 U.S.C. 1677(6).

[FR Doc. E6–15860 Filed 9–26–06; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 06–00002.'' A summary of the application follows.

Summary of the Application

Applicant: Darah Thomas, doing business as, Necole Shannon Global Export Service (''NSGES''), 7126 E. King Pl., Tulsa, Oklahoma 74115.

Contact: Darah Thomas, Telephone: (918) 834–6277.

Application No.: 06–00002.

Date Deemed Submitted: September 15, 2006. Members (in addition to applicant): None.

NSGES seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All Products.

2. Services

All Services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with State and Federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, Applicant, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors

and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. Applicant and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by applicant with its distributors in Export Markets.

Definition

1. ''*Supplier*'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Dated: September 21, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 06–8264 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092006F]

Endangered Species; File No. 1448

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

ACTION: Notice; receipt of application for modification

SUMMARY: Notice is hereby given that Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543–1097, has requested a modification to scientific research Permit No. 1448.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 27, 2006.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1448.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1448, issued on January 9, 2004 (69 FR 3332) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1448 authorizes the permit holder to handle, measure, flipper tag, scan for Passive Integrated Transponder (PIT) tags, biopsy sample and photograph a total of 1,500 loggerhead, 50 green, 250 leatherback and 50 hawksbill sea turtles and handle, measure, flipper tag, scan for PIT tags and photograph a total of 50 Kemp's ridley sea turtles over the duration of the permit. Seventy-five of the loggerheads and 20 of the Kemp's ridleys will also be dip-netted. This research is conducted on animals that have been already incidentally captured in commercial fisheries operating in state waters and the Exclusive Economic Zone in the Northwest Atlantic Ocean to determine the size and composition of populations of sea turtles found in the commercial fishing areas of the Northwest Atlantic Ocean and to establish individual identities of turtles. The permit holder requests additional authorization to biopsy sample any of the 50 Kemp's ridley sea turtles for which the permit holder is already authorized to handle, measure, flipper tag, scan for PIT tags and photograph that are greater than 25 cm in total carapace length notch to tip). Tissue biopsies would be collected using the same protocol currently authorized by the existing permit. This data would help confirm observer identifications of sea turtles made by collaborating NOAA researchers.

Dated: September 21, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–15825 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092006C]

Endangered Species; File No. 1581

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, Pacific Islands Fisheries Science Center (Responsible Official- Samuel Pooley, Principal Investigator- George Balazs), 2570 Dole Street, Honolulu, HI 96822, has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 27, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room

13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1581.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to continue long-term monitoring of the status of green and hawksbill turtles in the Hawaiian Islands to determine their abundance, size ranges, health/disease status, diving behavior, habitat use, foraging ecology, local movements, and migration routes. Researchers would annually capture up to 600 green and 10 hawksbill sea turtles by hand, scoop net, entanglement net, and bullpen net. All green sea turtles would be measured, weighed, passive integrated transponder tagged, and flipper tagged. A subset of green sea turtles would have their shell etched with an identification mark, be blood sampled, tissue sampled, lavaged, and have an electronic tag attached to them. Hawksbill sea turtles would be measured, weighed, passive integrated transponder tagged, flipper tagged, blood sampled, and tissue sampled. All animals would be released. Research would take place in the Hawaiian Islands and the permit would be issued for 5 years.

Dated: September 21, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–15826 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 091406B]

Marine Mammals; National Marine Fisheries Service File No. 31-1741; U.S. Fish and Wildlife Service File No. MA081663

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the Wildlife Conservation Society (WCS), 2300 Southern Blvd., Bronx, New York 10460 [Dr. Howard C. Rosenbaum, Principal Investigator], has been issued an amendment to scientific research Permit No. 31–1741/MA081663.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203; phone (800) 358–2104; fax (703) 358–2281; and

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521.

FOR FURTHER INFORMATION CONTACT: Monica Farris, Division of Management Authority, US Fish and Wildlife Service, (703) 358–2104.

SUPPLEMENTARY INFORMATION: On June 13, 2006, notice was published in the **Federal Register** (71 FR 34064) that a request for an amendment to a joint NMFS/USFWS scientific research permit had been submitted by the above-named organization. This amendment revises the current permit to include the acquisition, importation and exportation/re-exportion of specimens and materials from polar bears (*Ursus maritimus*), including shed hair, feces, and DNA and tissue samples from the wild, tissue banks, and collaborators. The permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.) and the regulations governing the taking and importing of marine mammals (50 CFR part 18).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 21, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

Dated: September 21, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–15892 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Special Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from Bahrain

September 21, 2006.

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

ACTION: Notice of Procedures

SUMMARY: This notice sets forth the procedures the Committee will follow in considering requests from the public for textile and apparel safeguard actions as provided for in Title III, Subtitle B, Section 321 through Section 328 of the United States-Bahrain Free Trade Agreement Implementation Act.

EFFECTIVE DATE: September 27, 2006

ADDRESSES: Requests must be submitted to: the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background:

Title III, Subtitle B, Section 321 through Section 328 of the United States-Bahrain Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in

Article 3.1 of the United States-Bahrain Free Trade Agreement (the ''Agreement''). The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a textile or apparel article from Bahrain is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Bahrain to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force.

The import tariff relief is effective beginning on the date that the Committee determines that a ''Bahraini textile or apparel article'' as defined in Section 301(2) of the Act, is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article. The maximum period of import tariff relief, as set forth in Section 3 of this notice, shall be three years. However, if the initial period for import tariff relief is less than three years, the Committee may extend the period of import relief to the maximum three years if the Committee determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition, and that the domestic industry is, in fact, making a positive adjustment to import competition. Import tariff relief may not be applied to the same article under these procedures if relief previously has been granted with respect to that article under: (1) these provisions; or (2) Chapter 1 of Title II of the Trade Act of 1974.

Authority to provide import tariff relief with respect to a Bahraini textile or apparel article will expire ten years after duties on the article are eliminated pursuant to the Agreement.

Under Article 3.1.6 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Bahrain ''mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the safeguard action.'' Such concessions shall be limited to textile and apparel products, unless the United States and Bahrain agree otherwise. If the United States and Bahrain are unable to agree on trade liberalizing compensation, Bahrain may increase customs duties equivalently on U.S. products. The obligation to provide compensation terminates upon termination of the safeguard relief. Section 327 of the Act extends the authority under Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, to measures taken pursuant to the Agreement's textile and apparel safeguard provisions.

In order to facilitate the implementation of Title III, Subtitle B, Section 321 through Section 328 of the United States-Bahrain Free Trade Agreement Implementation Act, the Committee has determined that actions taken under this safeguard fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1), and this notice does not waive that determination. These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(a)(1) and 553(b)(A).

1. Requirements for Requests. Pursuant to Section 321(a) of the Act and Section 6 of Presidential Proclamation 8039 of July 27, 2006, an interested party may file a request for a textile and apparel safeguard action with the Committee. The Committee will review requests from the interested party sent to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230. Ten copies of any such request must be provided. As provided in Section 328 of the Act, the Committee will protect from disclosure any business confidential information that is marked ''business confidential'' to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. At the conclusion of the request, an interested party must attest that ''all information contained in the request is complete and accurate and no false claims, statements, or representations have been made.'' Consistently with Section 321(a), the Committee will review a request initially to determine whether to commence consideration of the request on its merits. Within 15 working days of receipt of a request, the Committee will determine whether the request provides the information necessary for the Committee to consider the request in light of the considerations set forth below. If the request does not, the Committee will promptly notify the requester of the reasons for this determination and the request will not be considered. However, the Committee will reevaluate any request that is resubmitted with additional information.

Consistent with longstanding Committee practice in considering textile safeguard actions, the Committee will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) a domestic producer or producers of an article that is like or directly competitive with the subject Bahraini textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Bahraini textile or apparel article.

A request will only be considered if the request includes the specific information set forth below in support of a claim that a textile or apparel article from Bahrain is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article.

A. Product description. Name and description of the imported article concerned, including the category or categories or part thereof of the U.S. Textile and Apparel Category System (see ''Textile Correlation'' at *http://otexa.ita.doc.gov/corr.html*) under which such article is classified, the Harmonized Tariff Schedule of the United States subheading(s) under which such article is classified, and the name and description of the like or directly competitive domestic article concerned.

B. Import data. The following data, in quantity by category unit (see ''Textile Correlation''), on total imports of the subject article into the United States and imports from Bahrain into the United States:

* Annual data for the most recent three full calendar years for which such data are available;
* Quarterly data for the most recent year for which such data are

partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2005, April-June 2005 and January-March 2004, April-June 2004).

The data should demonstrate that imports of a Bahraini origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing rapidly in absolute terms or relative to the domestic market for that article.

C. Production data. The following data, in quantity by category unit (see ''Textile Correlation''), on U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof:

* Annual data for the most recent three full calendar years for which such data are available;
* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2005, April-June 2005 and January-March 2004, April-June 2004).

If the like or directly competitive article(s) of U.S. origin does not correspond to a category or categories of the U.S. Textile and Apparel Category system for which production data are available from official statistics of the U.S. Department of Commerce (see ''U.S. Imports, Production, Markets, Import Production Ratios and Domestic Market Shares for Textile and Apparel Product Categories'' at website *http://otexa.ita.doc.gov/ipbook.pdf*), the requester must provide a complete listing of all sources from which the data were obtained and an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin. In such cases, data should be reported in the first unit of quantity in the Harmonized Tariff Schedule of the United States *(http://www.usitc.gov/tata/hts)* for the Bahraini origin textile and/or apparel articles and the like or directly competitive articles of U.S. origin.

D. Market Share Data. The following data, in quantity by category unit (see ''Textile Correlation''), on imports from Bahrain as a percentage of the domestic market (defined as the sum of domestic production of the like or directly competitive article and total imports of the subject article); on total imports as a percentage of the domestic market; and on domestic production of like or directly competitive articles as a percentage of the domestic market:

* Annual data for the most recent three full calendar years for which such data are available;
* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2005, April-June 2005 and January-March 2004, April-June 2004).

E. Additional data showing serious damage or actual threat thereof. All data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Bahrain to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefore:

* Annual data for the most recent three full calendar years for which such data are available;
* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2005, April-June 2005 and January-March 2004, April-June 2004).

2. Consideration of Requests. Consistent with Section 321(b) of the Act, if the Committee determines that the request provides the information necessary for it to be considered, the Committee will cause to be published in the **Federal Register** a notice seeking public comments regarding the request, which will include a summary of the request and the date by which comments must be received. The **Federal Register** notice and the request, with the exception of information marked ''business confidential,'' will be posted by the Department of Commerce's Office of Textiles and Apparel (''OTEXA'') on the Internet (*http://otexa.ita.doc.gov*). The comment period shall be 30 calendar days. To the extent business confidential information is provided, a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. At the conclusion of its submission of such public comments, an interested party must attest that ''all information contained in the request is complete and accurate and no false claims, statements, or representations have been made.'' Comments received, with the exception of information marked ''business confidential,'' will be available in the Department of Commerce's Trade Information Center for review by the public. If a comment alleges that there is no serious damage or actual threat thereof, or that the subject imports are not the cause of the serious damage or actual threat thereof, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive articles. In the case of requests submitted by entities that are not the actual producers of a like or directly competitive article, particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive article.

Any interested party may submit information to rebut, clarify, or correct public comments submitted by any other interested party at any time prior to the deadline provided in this section for submission of such public comments. If public comments are submitted less than 10 days before, or on, the applicable deadline for submission of such public comments, an interested party may submit information to rebut, clarify, or correct the public comments no later than 10 days after the applicable deadline for submission of public comments.

With respect to any request considered by the Committee, the Committee will make a determination within 60 calendar days of the close of the comment period. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published in a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**.

3. Determination and Provision of Relief. The Committee shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Bahraini textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. In making a determination, the Committee: (1) shall examine the effect of increased imports on the domestic industry as reflected in such relevant economic factors as output,

productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and (2) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof. The Committee, without delay, will provide written notice of its decision to the Government of Bahrain and will consult with said party upon its request.

If a determination under this section is affirmative, the Committee may provide import tariff relief to a U.S. industry to the extent necessary to remedy or prevent the serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. Such relief may consist of an increase in duties to the lower of: (1) the NTR/MFN duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR/MFN duty rate for that article on the day before the Agreement enters into force.

The import tariff relief is effective beginning on the date that the Committee's affirmative determination is published in the **Federal Register**. The maximum period of import tariff relief shall be three years. However, if the initial period for import relief is less than three years, the Committee may extend the period of import relief to the maximum three years if the Committee determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Import tariff relief may not be imposed for an aggregate period greater than three years. Import tariff relief may not be applied to the same article under these procedures if relief previously has been granted with respect to that article under: (1) these provisions; or (2) Chapter 1 of Title II of the Trade Act of 1974.

Authority to provide import tariff relief for a textile or apparel article from Bahrain that is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article, will expire ten years after duties on the article are eliminated pursuant to the Agreement.

4. Self Initiation. The Committee may, on its own initiative, consider whether imports of a textile or apparel article from Bahrain are being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In such considerations, the Committee will follow procedures consistent with those set forth in Section 2 of this notice, including causing to be published in the **Federal Register** a notice seeking public comment regarding the action it is considering.

4. Record Keeping and Business Confidential Information. OTEXA will maintain an official record for each request on behalf of the Committee. The official record will include all factual information, written argument, or other material developed by, presented to, or obtained by OTEXA regarding the request, as well as other material provided to the Department of Commerce by other government agencies for inclusion in the official record. The official record will include Committee memoranda pertaining to the request, memoranda of Committee meetings, meetings between OTEXA staff and the public, determinations, and notices published in the **Federal Register**. The official record will contain material which is public, business confidential, privileged, and classified, but will not include pre-decisional inter-agency or intra-agency communications. If the Committee decides it is appropriate to consider materials submitted in an untimely manner, such materials will be maintained in the official record. Otherwise, such material will be returned to the submitter and will not be maintained as part of the official record. OTEXA will make the official record public except for business confidential information, privileged information, classified information, and other information the disclosure of which is prohibited by U.S. law. The public record will be available to the public for inspection and copying in a public reading room located in the Department of Commerce, Trade Information Center.

Information designated by the submitter as business confidential will normally be considered to be business confidential unless it is publicly available. The Committee will protect from disclosure any business confidential information that is marked ''business confidential'' to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. The Committee will make available to the public non-confidential versions of the request that is being considered, non-confidential versions of any public comments received with respect to a request, and, in the event consultations are requested, the statement of the reasons and justifications for the determination subsequent to the delivery of the statement to Bahrain.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–15869 Filed 9–26–06; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Consumer Opinion Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On May 1, 2006, the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek approval for a collection of information to be conducted through a Consumer Opinion Forum (Forum) posted on the CPSC Web site, *http://www.cpsc.gov.* 71 FR 25570. The Commission now announces that it has submitted to the Office of Management and Budget (OMB) a request for approval of that collection of information.

The Commission received two comments. One commentor, Safe Kids Worldwide (Safe Kids), supported the collection of information because it believes that direct consumer input on specific consumer products would be beneficial to the Commission in its efforts to improve the safety of consumer products and improve the effectiveness of product recall campaigns. Safe Kids recommended that the Commission make public the participant responses on the Forum. Staff will evaluate whether posting summaries of participant responses on certain Forum topics or questions may be useful after the program is fully operational.

Another commentor, the Consumer Specialty Products Association (CSPA), questioned how the comments would be solicited and verified. In addition, CSPA

asked whether product-specific information would be kept confidential, and what role a manufacturer would have in such a Forum.

In the first **Federal Register** notice, 71 FR 25570, the Commission explained in detail how information would be collected through the Forum. Any individual at least 18 years old who has access to the Internet and to e-mail may voluntarily register to participate in the Forum through the CPSC Web site. During the registration process, participants will be asked to provide an e-mail address and personal password to access the Forum. When a new question is posted in the Forum, registered participants may be invited via e-mail to log into the Forum and to provide responses to the posted question(s). Since the purpose of the Forum is to solicit consumer opinions and perceptions, the staff will not verify the responses provided by participants. Although questions related to certain product classes or categories might be posted in the Forum, staff does not intend to pose questions that are specific to a particular brand or model of product. Such information, however, may be received inadvertently through the Forum even if it is not solicited. To the extent that any information is obtained that could identify a specific product brand or model, such information will be kept confidential and will not be released.

The information collected via the Forum will help Commission staff evaluate consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information may also assist the staff in its efforts to support voluntary standards activities, and help the staff identify areas regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more readily understood by a wider range of consumers. The Forum may also be used to solicit consumer opinions and feedback regarding the effectiveness of product recall communications and to determine what action is being taken by consumers in response to such communications and why. This may aid in tailoring future recall activities to increase the success of those activities. If this information is not collected, the Commission would not have available useful information regarding consumer experiences, opinions, and perceptions related to specific product use, which the Commission relies on in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

Additional Information About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Consumer Opinion Forum.

Type of request: Approval of collection of information.

General description of respondents: Consumers at least 18 years of age.

Estimated annual number of respondents: 5,000.

Estimated average number of hours per respondent: 3.16 per year.

Estimated number of hours for all respondents: 15,833 per year.

Estimated cost per hour to respond: $28.75

Estimated cost of collection for all respondents: $455,000.

Comments: Comments on this request for approval of information collection requirements should be submitted by October 27, 2006 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov,* or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: September 21, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–15773 Filed 9–26–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–57]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–57 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 20, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

14 SEP 2006

In reply refer to:
I-06/009579

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-57, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $1.3 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Canada

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .164 billion
Other	$1.136 billion
TOTAL	$1.300 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** in support of a Direct Commercial Sale of four Boeing C-17 Globemaster III aircraft, this proposed sale includes 18 Pratt & Whitney F117-PW-100 engines, 4 AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, 20 AN/AVS-9 Night Vision Goggles, Electronic Combat International Security Assistance Program software equipment, spare and repair parts, mission planning system and software, Personnel Life Support equipment, flares, COMSEC equipment, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Air Force (QZZ)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 14 SEP 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada – Support for C-17 Globemaster III aircraft

The Government of Canada requested a possible sale in support of a Direct Commercial Sale for four Boeing C-17 Globemaster III aircraft, this proposed sale includes 18 Pratt & Whitney F117-PW-100 engines, 4 AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, 20 AN/AVS-9 Night Vision Goggles, Electronic Combat International Security Assistance Program software equipment, spare and repair parts, mission planning system and software, Personnel Life Support equipment, flares, COMSEC equipment, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $1.3 billion.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces. Additionally, their efforts in peacekeeping and humanitarian operations have made a significant impact to regional political and economic stability and have served U.S. national security interests. The sale of C-17s to Canada will significantly increase its capability to rapidly deploy its forces.

Canada does not currently have a heavy airlift capability and must rely on outside sources for their heavy military airlift needs. This assistance normally takes the form of either U.S. Air Force airlift or contract carriers that use Russian heavy airlift aircraft. The C-17 will greatly improve Canada's capability to rapidly deploy in support of global coalition operations and will also greatly enhance its ability to lead regional humanitarian/peacekeeping operations.

Canada has the ability to absorb and employ the C-17. They are currently studying where in Canada to base the aircraft and plan on building new infrastructure and upgrading current infrastructure as required to support the C-17.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

This proposed sale will involve the following contractors:

Boeing Company	Long Beach, California
Boeing Company Training Systems	St. Louis, Missouri
AAI Services Corporation	Goose Creek, South Carolina
United Technologies Cooperation	East Hartford, Connecticut

Northrop Grumman Systems Corporation Rolling Meadows, Illinois

Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

This proposed sale will result in Boeing establishing a facility in Canada to provide C-17 logistics support under the current GLOBEMASTER Support Partnership. The proposed plan will require seven U.S. Government representatives at the facility. Implementation of this proposed sale will require the assignment of up to ten each U.S. Government and contractor representatives in country for annual participation in training, program management, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/AAQ-24V(13) Large Aircraft Infrared Countermeasure (LAIRCM) is an active countermeasure system designed to defeat man-portable, shoulder-fired, and vehicle-launched infrared guided missile guidance by directing a high-intensity modulated laser beam into the missile seeker. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. LAIRCM is designed for installation on a wide range of fixed-wing aircraft. The basic hardware is Unclassified. However, the system relies on jam codes that direct the laser to fire at a specified rate and frequency, depending on the threat detected. These jam codes are developed by the LIRCM System Group and are classified Secret. Technical data and other documentation are classified up to Secret.

2. The AN/AVS-9 Night Vision Goggles (NVG), a 3rd generation aviation device offers a higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment; 25-mm eye relief eyepieces, which easily accommodate eyeglasses, and a low-profile battery pack. Minus-blue filter screens glare from cockpit instrument lighting; and a class B filter (available with some variants) can accommodate aircraft color displays. Other features include: low-distortion optics and automatic brightness control. The Night Vision Imaging System (NVIS) modification includes cockpit modifications to provide NVG-compatible cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. The hardware, technical data, and documentation to be provided are Unclassified.

3. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-

47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–8291 Filed 9–26–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–59]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–59 with attached transmittal and policy justification.

Dated: September 22, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 SEP 2006

In reply refer to:
I-06/009746

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-59, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Netherland's for defense articles and services estimated to cost $150 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Netherlands

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 0 million
Other	$150 million
TOTAL	$150 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: logistics support services/equipment for the F-16 aircraft including avionics/computer software support, aircraft engine services/modifications, publications and technical documentation, contractor technical services, spare and repair parts, depot level repair support and other related program elements of support to ensure aircraft operational availability.

(iv) **Military Department**: Air Force (QZY)

(v) **Prior Related Cases, if any**:
FMS case QBK - $233 million – 12Apr00
FMS case QBH - $147 million – 15Dec94

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: none

(viii) **Date Report Delivered to Congress**: 21 SEP 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands – Logistics Support for F-16 Aircraft

The Government of the Netherlands has requested a possible purchase of logistics support services/equipment for the F-16 aircraft including avionics/computer software support, aircraft engine services/modifications, publications and technical documentation, contractor technical services, spare and repair parts, depot level repair support and other related program elements of support to ensure aircraft operational availability. The estimated cost is $150 million.

This proposed sale contributes to the foreign policy and national security objectives of the U.S. by improving the military capabilities of the Netherlands and enhancing standardization and interoperability with U.S. forces, as well as with the European Participating Group (EPG) countries in the F-16 Multi-National Fighter Program (MNFP).

The Netherlands needs this logistics support to maintain the operational level of its F-16 squadrons in support of organic and NATO mission commitments, such as its current operations in Afghanistan, continued contributions to the Global War on Terrorism, and possible future coalition operations. The Netherlands will have no difficulty absorbing these logistic support services and equipment.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The contractors expected to participate in this program are United Technologies Corporation, Pratt & Whitney, West Palm Beach, Florida; Lockheed Fort Worth Company, Fort Worth, Texas; and Westinghouse Electric Corporation, Baltimore, Maryland. There are no offset agreements proposed to be entered into in connection with this potential sale. There is no prime contractor involved in this program. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require the assignment of two U.S. Government personnel and one contractor representative in the Netherlands for a period of up to five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–8317 Filed 9–26–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–55 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 22, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 SEP 2006

In reply refer to:
I-06/009376

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-55, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to United Arab Emirates for defense articles and services estimated to cost $752 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: United Arab Emirates

(ii) **Total Estimated Value**:

Major Defense Equipment*	$580 million
Other	$172 million
TOTAL	$752 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**:

Major Defense Equipment (MDE)

20 High Mobility Artillery Rocket Systems (HIMARS) Launchers;
101 M39A1 Army Tactical Missile System (ATACMS) Block 1A Anti-Personnel-Anti-Material Rocket Pods;
101 M39A1 ATACMS Block 1A Unitary Rocket Pods;
130 M30 Guided Multiple Launch Rocket Systems (GMLRS) Dual Purpose Improved Conventional Munitions Rocket Pods;
130 M31 Unitary High Explosive GMLRS Pods
60 Multiple Launcher Rocket Systems (MLRS) Practice Rocket Pods;
104 M26 MLRS Rocket Pods;
20 M1084A1 Family of Medium Truck Vehicles; and
3 M108A1 Wreckers.

Also included are support equipment, communications equipment, spare and repair parts, test sets, batteries, laptop computers, publications and technical data, facility design, personnel training and equipment, systems integration support, a Quality Assurance Team and a Technical Assistance Fielding Team service support, United States (U.S.) Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) **Military Department**: Army (ZUD)

(v) **Prior Related Cases, if any**: none

* as defined in Section 47(6) of the Arms Export Control Act.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached.

(viii) **Date Report Delivered to Congress**: 21 SEP 2006

POLICY JUSTIFICATION

United Arab Emirates - High Mobility Artillery Rocket Systems

The Government of United Arab Emirates (UAE) has requested a possible sale of

Major Defense Equipment (MDE)

20 High Mobility Artillery Rocket Systems (HIMARS) Launchers;
101 M39A1 Army Tactical Missile System (ATACMS) Block 1A Anti-Personnel-Anti-Material Rocket Pods;
101 M39A1 ATACMS Block 1A Unitary Rocket Pods;
130 M30 Guided Multiple Launch Rocket Systems (GMLRS) Dual Purpose Improved Conventional Munitions Rocket Pods;
130 M31 Unitary High Explosive GMLRS Pods
60 Multiple Launcher Rocket Systems (MLRS) Practice Rocket Pods;
104 M26 MLRS Rocket Pods;
20 M1084A1 Family of Medium Truck Vehicles; and
3 M108A1 Wreckers.

Also included are support equipment, communications equipment, spare and repair parts, test sets, batteries, laptop computers, publications and technical data, personnel training and equipment, systems integration support, a Quality Assurance Team and a Technical Assistance Fielding Team service support, United States (U.S.) Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $752 million.

This proposed sale will contribute to the foreign policy and national security of the U.S. by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The HIMARS will enhance UAE military capability by providing a highly effective indirect area fire artillery system that is critical to successful deterrence and national defense. HIMARS supplements traditional cannon artillery by delivering high volume firepower in a short time against time-sensitive targets. At shorter ranges, HIMARS complements tube artillery with heavy barrages against assaulting forces, counter-fire and defense suppression. This proposed sale would enhance the UAEs ability to deter and repulse aggression by hostile forces, and contribute directly to greater stability in the Gulf region. The UAE will have no difficulty absorbing and integrating this system into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Missile and Fire Control at Dallas, Texas and Stewart & Stevenson at Sealy, Texas. The purchaser has requested offsets; agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this sale will require the assignment of a U.S. Government Quality Assurance Team of up to five contractor representatives to UAE for two weeks to assist in the delivery and deployment of the HIRMARS and sequential deliveries. There will be a three-man Technical Assistance Fielding Team for training mission for up to two years. A U.S. Government representative will remain in country for a minimum of two years in order to assist in the security assistance aspects of the mission.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The High Mobility Artillery Rocket System (HIMARS) is a highly mobile, all-weather indirect area fire artillery system. The HIMARS mission is to supplement cannon artillery to deliver a large volume of firepower within a short time against critical time-sensitive targets. At shorter ranges, HIMARS complements tube artillery with heavy barrages against assaulting forces as well as in the counter-fire, or defense suppression roles.

2. The highest classification level for release of the M39A1 Army Tactical Missile Systems (ATACMS) Block 1A Anti Personnel-Anti Material and M39 ATACMS Block 1A Unitary Rocket Pods is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale, production, or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Secret information. Launcher platform software, weapon operational software, command and control special application software, and command and control loadable munitions module software are considered Secret. The system specifications and limitations are classified Secret. Vulnerability data is classified up to Secret. Countermeasures, counter-counter-measures, vulnerability/susceptibility analyses, and threat definitions are classified Secret.

3. The Global Positioning System Precise Positioning Service (GPS PPS) component of the HIMARS munitions (Guided Multiple Launch Rocket Systems (GMLRS) and ATACMS) is also contained in the Fire Direction System, is classified Secret, and is considered sensitive. To that end, no GPS PPS design information, including GPS software algorithms, will be disclosed in the course of this proposed sale to United Arab Emirates. Susceptibility of GMLRS to diversion or exploitation is considered low risk. The GMLRS employs an inertial navigational system that is aided by a Selective Availability Anti-Spoofing Module (SAASM) equipped GPS receiver.

4. Susceptibility of ATACMS Block1A to diversion or exploitation is considered low risk. Components of the system are also considered highly resistant to reverse engineering. Detailed knowledge of the technical capabilities of the system could enable an enemy to tailor defenses and adjust tactics and procedures to minimize the effectiveness of the system.

[FR Doc. 06–8318 Filed 9–26–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–68]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–68 with attached transmittal and policy justification.

Dated: September 22, 2006.

C.R. Choate,

Alternate OSD Register Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

19 SEP 2006

In reply refer to:
I-06/011662

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-68, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $250 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	**Senate**
Committee on International Relations	**Committee on Foreign Relations**
Committee on Armed Services	**Committee on Armed Services**
Committee on Appropriations	**Committee on Appropriations**

Transmittal No. 06-68

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Iraq

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$250 million
TOTAL	$250 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** logistics support services/equipment for helicopters (Jet Ranger, Huey II and Mi-17) and vehicles (Standard/Non-Standard Wheeled Vehicles, Tracked Vehicles, Infantry Light Armored Vehicles Armored Personnel Carriers) and small/medium weapons and weapon systems including on-job-training, supply and maintenance support, measuring and hand tools for ground systems, technical support, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) **Military Department:** Army (AAD)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 19 SEP 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq - Logistics Support for Helicopters, Vehicles, and Weapons

The Government of Iraq has requested a possible sale of logistics support services/equipment for helicopters (Jet Ranger, Huey II and Mi-17) and vehicles (Standard/Non-Standard Wheeled Vehicles, Tracked Vehicles, Infantry Light Armored Vehicles Armored Personnel Carriers) and small/medium weapons and weapon systems including on-job-training, supply and maintenance support, measuring and hand tools for ground systems, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $250 million.

This proposed sale will contribute to the foreign policy and national security of the U.S. by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the United States.

The Government of Iraq needs the contractor technical support, maintenance, and logistical services to maintain the operational capabilities of its helicopters, vehicles, and small/medium weapons and weapon systems.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The contractors are unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale may require the assignment of up to 10 Government and up to 65 contractor representatives to over-see up to 10 ground maintenance sites in Iraq for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–8319 Filed 9–26–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–69]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–69 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 22, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

19 SEP 2006

In reply refer to:
I-06/011665

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-69, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $500 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-69

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Iraq

(ii) **Total Estimated Value:**

Major Defense Equipment*	$372 million
Other	$128 million
TOTAL	$500 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:**

10,126 M17 9mm Glock Pistols
50,750 M16A2 Rifles
50,750 M4A1 Rifles
3,442 M24 Sniper Rifles
8,105 M249 Machine Guns
3,037 M240B Machine Guns
1,268 Generation (Gen) II Single Tube Night Vision Goggles
15 AN/PVS-17 Gen III Assault Weapon Sights
40 AN/PVS-10 Gen II Sniper Weapon Sights
20 Mi-17 Troop Transport Helicopters
600 Infantry Light Armored Vehicles Armored Personnel Carriers
2,126,250 9mm Pistol Ammunition
35,437,500 5.56mm Rifle Ammunition
633,328 7.62mm Sniper Rifle Ammunition
1,621,000 5.56mm Machine Gun Ammunition
1,214,800 M240 7.62mm Crew Served Machine Gun Ammunition
9,562 Hand Held Pyrotechnics and
8,670 Hand Held Smoke Munitions

* as defined in Section 47(6) of the Arms Export Control Act.

Also included: logistics support services/equipment for helicopters (Jet Ranger, Huey II and Mi-17) and vehicles (Standard/Non-Standard Wheeled Vehicles, Tracked Vehicles, Infantry Light Armored Vehicles Armored Personnel Carriers) and small/medium weapons and weapon systems, on-job-training, laser pointers, supply and maintenance support, measuring and hand tools for ground systems, technical support, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (AAC)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 19 SEP 2006

POLICY JUSTIFICATION

Iraq - Helicopters, Vehicles, and Weapons and Support

The Government of Iraq has requested a possible sale of the following weapons:

10,126 M17 9mm Glock Pistols
50,750 M16A2 Rifles
50,750 M4A1 Rifles
3,442 M24 Sniper Rifles
8,105 M249 Machine Guns
3,037 M240B Machine Guns
1,268 Generation (Gen) II Single Tube Night Vision Goggles
15 AN/PVS-17 Gen III Assault Weapon Sights
40 AN/PVS-10 Gen II Sniper Weapon Sights
20 Mi-17 Troop Transport Helicopters
600 Infantry Light Armored Vehicles Armored Personnel Carriers
2,126,250 9mm Pistol Ammunition
35,437,500 5.56mm Rifle Ammunition
633,328 7.62mm Sniper Rifle Ammunition
1,621,000 5.56mm Machine Gun Ammunition
1,214,800 M240 7.62mm Crew Served Machine Gun Ammunition
9,562 Hand Held Pyrotechnics and
8,670 Hand Held Smoke Munitions.

Also included: logistics support services/equipment for helicopters (Jet Ranger, Huey II and Mi-17) and vehicles (Standard/Non-Standard Wheeled Vehicles, Tracked Vehicles, Infantry Light Armored Vehicles Armored Personnel Carriers) and small/medium weapons and weapon systems, on-job-training, laser pointers, supply and maintenance support, measuring and hand tools for ground systems, technical support, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $500 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the U.S., as well as offering hope for a more stable and peaceful Middle East.

The Government of Iraq has an assortment of multiple makes of antiquated vehicles with some new vehicles provided under the Multi-National Security Transition Command. The multiple makes of antiquated vehicles are difficult and costly to maintain. The modernization plan calls for purifying the fleet with more capable equipment and services to sustain equipment. The troop helicopter carries will allow the Iraqis to rapidly move troops into position. Also, the aircraft will provide the capability to medical evacuate casualties. Leadership, tactical and technical training is needed to develop a professional Iraqi Armed Forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

(C) The contractors are unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale may require the assignment of up to 69 contractor representatives to execute the maintenance program for a duration up to 24 months. There will be up to 11 contractors to field and train Iraqi personnel on operating the equipment and maintenance for 8 months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. Generation (Gen) II Single Tube Night Vision Goggle – A typical Gen II night vision goggle uses a high-end Gen II image intensifier tube with a signal to noise ratio which equates to a Figure of Merit of 1250 or less.

2. Commercial AN/PVS-17 - The Mini Night Sight (MNS) is a lightweight, compact, high performance system. It weighs less than two pounds and is submersible to twenty meters (66ft.). It is mounted on the extended carbine rail that has been optimized to allow other systems to be used in conjunction with the sight such as a laser illuminator.

3. Commercial AN/PVS-10 - The Sniper Night Sight (SNS) is a lightweight, weapon- mounted, self-contained image-intensified passive device designed primarily for use by the sniper in day and night operations. A day/night lever enables the user to alternate between day and night modes of operation. SNS employs a variable gain image intensifier that can be adjusted by the user depending on the ambient light levels. SNS includes a black-line reticle for day use and illuminated for night use.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–8320 Filed 9–26–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Advisory Committee Meeting Cancellation

AGENCY: Department of Defense.

ACTION: Notice of meeting cancellation.

SUMMARY: On September 20, 2006, the Department of Defense published a notice of meeting (71 FR 54980) scheduled for September 28, 2006. Due to inability to achieve a quorum the meeting was cancelled. This notice announces the cancellation. This meeting may be rescheduled and announced at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Van Niman, Executive Director, DBB, 703–697–2346 or *Kelly.vanniman@osd.mil.*

Dated: September 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8290 Filed 9–26–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Date Change.

SUMMARY: On Thursday, August 17, 2006 (71 FR 47491) the Department of Defense announced a meeting of the Defense Science Board (DSB) Task Force on Defense Industrial Structure for Transformation. The October 2006 meeting date have been revised from October 10, 2006 to October 10 and 11, 2006. The task force will meet in closed session. The meeting will be held at the Pentagon on October 10, 2006; and Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA on October 11, 2006.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via

e-mail at *charles.lominac@osd.mil,* or via phone at (703) 571–0081.

Dated: September 22, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8316 Filed 9–26–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, 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 November 27, 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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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: September 21, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Schools and Staffing Survey 2007.

Frequency: One-time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 124,906.

Burden Hours: 70,775.

Abstract: The Schools and Staffing Survey is a nationally and state representative survey of teachers, principals, schools and school districts. Respondents include public and private school principals, teachers and school and LEA staff persons. Topics covered include characteristics of teachers, principals, schools, school libraries, teacher training opportunities, retention, retirement, hiring, and shortages.

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 3191. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–15847 Filed 9–26–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Norway.

This subsequent arrangement concerns the retransfer of eight irradiated fuel rod segments containing a total of 124.4 grams of U.S.-origin uranium, 5.74 grams of which is U–235, and 11.48 grams of U.S.-origin plutonium, from the Institutt for Energiteknikk, Kjeller, Norway, to the CEA/CEN Cadarache, LECA/STAR research center, Saint Paul-Les-Durance, France. The segments, irradiated at the Halden Boiling Water Reactor, are being retransferred for the purpose of post irradiation examination. CEA/CEN Cadarache, LECA/STAR research center is authorized to receive nuclear material pursuant to the U.S.-Euratom Agreement for Cooperation.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 21, 2006.

For the Department of Energy.

Anatoli Welihozkiy,

Acting Director, Office of International Regimes and Agreements.

[FR Doc. E6–15804 Filed 9–26–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, October 16, 2006, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–3251; *david.thomassen@science.doe.gov*) Designated Federal Officer, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda

Monday, October 16, 2006

- Comments from the Office of Science
- Report by Dr. Jerry Elwood, Acting Associate Director of Science for Biological and Environmental Research
- Report on BERAC review of Free Air Carbon Dioxide Enrichment (FACE) Experiments
- Reports on progress toward long term Performance Assessment Rating Tool (PART) Measures
- Update on Genomics: GTL program
- New business
- Public comment (10 minute rule)

Public Participation: The one-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 21, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–15828 Filed 9–26–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 11, 2006; 5 p.m.–8 p.m.

ADDRESSES: 7710 West Cheyenne Avenue, Conference Room #130, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, Deputy Designated Federal Officer, P.O. Box 98518, Las Vegas, Nevada 89193. Phone: (702) 295–2836; E-mail: *snyderk@nv.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Approval of three letters pertaining to budget allocation, budget prioritization, and membership recruitment. Committee updates.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Kelly Snyder at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Kelly Snyder at the address listed above.

Issued at Washington, DC on September 22, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–15829 Filed 9–26–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. This notice announces the fourteenth FEMAC public meeting, an advisory committee established under Executive Order 13123—''Greening the Government through Efficient Energy Management.''

DATES: October 19, 2006; 1 p.m. to 4:30 p.m.

ADDRESSES: Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Lafayette Room, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Rick Klimkos, Designated Federal Officer, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–8287.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To seek input and feedback from interested parties on working group recommendations to meet mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussions on the following topics:

○ Update on FEMAC working group activities;

○ Discussion on FEMAC priorities;

○ Open public discussion.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Rick Klimkos at (202) 586–8287 or *rick.klimkos@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties. The chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 21, 2006.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E6–15830 Filed 9–26–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–74–003]

American Electric Power Service Corporation, Behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, Inc., Dayton Power and Light Company; Notice of Compliance Filing

September 20, 2006.

Take notice on September 14, 2006, PJM Interconnection filed a refund report, showing refunds that were implemented in its June billings to its members and settled on July 20, 2006, pursuant to the Commission's order issued May 30, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15806 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF06–2011–000]

United States Department of Energy—Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued September 21, 2006.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. In this order, we approve the Bonneville Power Administration's (Bonneville) proposed wholesale power rates [1] on an interim basis, pending our full review for final approval. We also provide an additional period of time for parties to file comments. The proposed wholesale power rates are intended to allow Bonneville to recover its costs and repay the Federal investment in the Federal Columbia River Power System.

Background

2. On July 28, 2006, Bonneville filed a request for interim and final approval of its wholesale power rates in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [2] and subpart B of part 300 of the Commission's regulations.[3]

Interventions and Comments

3. Notice of Bonneville's July 28, 2006 wholesale power rates filing was published in the **Federal Register,** 71 FR 45,801 (2006), with protests or interventions due on or before August 28, 2006. Avista Corporation, Portland General Electric Company, Idaho Power Company, PacifiCorp, Puget Sound Energy, Inc., Northwest Requirements

[1] The proposed wholesale power rates for which Bonneville seeks approval for the period October 1, 2006 through September 30, 2009, include: PF–07 Priority Firm Power Rate, NR–07 New Resource Firm Power Rate, IP–07 Industrial Firm Power Rate, FPS–07 Firm Power Products and Services Energy Rate, and GTA General Transfer Agreement Delivery Charge in addition to related General Rates Schedule Provisions (GRSPs).

[2] 16 U.S.C. 839e(a)(2), 839e(i)(6) (2000).

[3] 18 CFR part 300 (2006).

Utilities,[4] and the Industrial Customers of Northwest Utilities filed timely motions to intervene, raising no substantive issues.

4. In addition, the Columbia River Inter-Tribal Fish Commission, the Nez Perce Tribe, and the Yakama Nation (collectively, Tribes), LS Power Associates, LLC (LS Power), and PPM Energy, Inc., Northwest Independent Power Producers Coalition, TransAlta Centralia Generation, LLC, and Calpine Corporation (collectively, Generators) filed timely motions to intervene and protests. Bonneville filed an answer in response to Generators protest. Additionally, Bonneville filed an answer in opposition to LS Power's intervention and protest.

Discussion

Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Notwithstanding Bonneville's opposition, we will grant LS Power's motion to intervene given its interest in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

Standard of Review

6. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act: [5]

(A) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting Bonneville's other costs;

(B) They must be based upon Bonneville's total system costs; and

(C) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.

7. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[6] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, non-firm rates:

(A) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) To encourage the most widespread use of Bonneville power; and

(C) To provide the lowest possible rates to consumers consistent with sound business principles.

8. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: To affirm or remand the rates submitted to it for review.[7]

9. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[8] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.[9]

Interim Approval

10. The Tribes argue that Bonneville's proposed rates are not sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System, particularly given Bonneville's fish and wildlife obligations. Generators and LS Power challenge Bonneville's plan to deny compensation to unaffiliated generators within its control area for generation-supplied reactive power service as unduly discriminatory and in violation of Commission policy.

11. The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed wholesale power rates. The Commission's preliminary review nevertheless indicates that Bonneville's wholesale power rates filing appears to meet the statutory standards and the minimum threshold filing requirements of part 300 of the Commission's regulations.[10] Moreover, the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies. The proposed rates therefore will be approved on an interim basis pending our full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.[11]

12. In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) Interim approval of Bonneville's proposed wholesale power rates is hereby granted, to become effective on October 1, 2006, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR § 300.20(c) (2006), pending final action and either their approval or disapproval.

(B) Within thirty (30) days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. Parties who wish to do so may file reply comments within twenty (20) days thereafter.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

[4] They are comprised of various municipalities, public utility districts, cooperatives, *etc.,* and they seek to intervene jointly and also individually.

[5] 16 U.S.C. 839e(a)(2) (2000). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[6] 16 U.S.C. 839e(k) (2000).

[7] E.g., United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61,351 at 62,216–17 (1994); see also, e.g., Aluminum Co. of *America* v. *Bonneville Power Administration,* 903 F.2d 585, 592–93 (9th Cir. 1989).

[8] See 18 CFR § 300.10(a)(3)(ii) (2006).

[9] See, e.g., United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61,375 at 63,606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61,351 at 62,059–60 (1987).

[10] See, e.g., United States Department of Energy—Bonneville Power Administration, 105 FERC ¶ 61,006 at P13–14 (2003); United States Department of Energy—Bonneville Power Administration, 96 FERC ¶ 61,360 at 62,358 (2001).

[11] 18 CFR 300.20(c) (2006).

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15798 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–596–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 21, 2006.

Take notice that on September 19, 2006, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, bearing a proposed effective date of October 19, 2006.

Columbia Gulf states that it is making this filing to incorporate the policies stated in the Commission's June 16, 2005, Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding in Docket Nos. PL05–8–000 and RM04–4–000.

Columbia Gulf states that copies of the filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15814 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–595–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

September 21, 2006.

Take notice that on September 15, 2006, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective October 15, 2006:

First Revised Sheet No. 22.
Original Sheet No. 23.
Sixth Revised Sheet No. 108.
First Revised Sheet No. 199.
Original Sheet No. 199A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15813 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–597–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 21, 2006.

Take notice that on September 19, 2006 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Annual Charge Adjustment (ACA) filing proposed to be effective October 1, 2006.

Eastern Shore states that copies of its filing have been mailed to its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR

154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15815 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–599–000]

Guardian Pipeline, L.L.C.; Notice of Tariff Filing

September 21, 2006.

Take notice that on September 19, 2006, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 5, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15808 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR06–1–002]

North American Electric Reliability Council and North American Electric Reliability Corporation; Notice of Compliance Filing

September 20, 2006.

Take notice that on September 18, 2006, the North American Electric Reliability Council and its affiliate, North American Electric Reliability Corporation, (collectively, NERC) filed a compliance filing addressing various governance issues identified in the Commission's order certifying NERC as the Electric Reliability Organization.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15805 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–105–000]

NorthWestern Corporation; Notice of Filing

September 21, 2006.

Take notice that on September 12, 2006, NorthWestern Corporation filed a petition for declaratory order, pursuant to Rule 207 of the Rules of Practice and Procedure, requesting the Commission to approve the use of an electric transmission rate design to allocate cost responsibility for new transmission facilities constructed to satisfy transmission service requests from participants in an on-going Open Season.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15809 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–459–000]

Transwestern Pipeline Company, LLC; Notice of Application

September 21, 2006.

Take notice that on September 15, 2006, Transwestern Pipeline Company, LLC (Transwestern), 5444 Westheimer Road, Houston, Texas 77056–5306, filed an application under section 7(c) of the Natural Gas Act (NGA) and parts 157 and 284 of the Commission's regulations, seeking authority to construct and operate: (i) Approximately 25 miles of 36-inch diameter pipeline loop in two segments on its existing San Juan Lateral in San Juan and McKinley Counties, New Mexico (San Juan 2008 Expansion Project), (ii) a new 259-mile pipeline consisting of 36-inch and 42-inch diameter pipe extending southward from Transwestern's existing mainline near Ash Fork in Yavapai County, Arizona through Coconino and Maricopa Counties, Arizona and terminating at the beginning of El Paso Natural Gas Company's (El Paso) East Valley Lateral near the City of Coolidge in Pinal County, Arizona (Phoenix Pipeline), and (iii) customer laterals, meter stations, and ancillary facilities (Phoenix Pipeline Project). In addition, Transwestern seeks authority to acquire an undivided interest in the East Valley Lateral and to use such facilities to render service in conjunction with the Phoenix Pipeline Project. The projects are collectively known as the Phoenix Expansion Project, all as more fully set forth in the application which is on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Transwestern states that the purpose of the Phoenix Expansion Project is to provide up to 500,000 dth per day of firm natural gas transportation service from the San Juan Basin to markets in the Phoenix area. Transwestern states that it has entered into binding precedent agreements with 5 shippers for 370,000 dth per day of this capacity. The total estimated costs of the Phoenix Pipeline Project and San Juan 2008 Expansion are $597,737,942 and $62,377,862, respectively. Transwestern seeks approval of its proposal to provide service on the Phoenix Pipeline Project under new Rate Schedules FTS–5 and ITS–2 and seeks a pre-determination that the costs of the San Juan 2008 Expansion costs may be rolled-in to its existing rates under Rate Schedule FTS–4.

Any questions regarding this application should be directed to Stephen T. Veatch, Senior Director, Certificates and Tariffs, Transwestern Pipeline Company, LLC, 5444 Westheimer Road, Houston, Texas 77056–5306; (713) 989–2024.

On November 22, 2005, the Director of the Office of Energy Projects granted Transwestern's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–4–000 to staff activities involving Transwestern's expansion project. Now, as of the filing of Transwestern's application on September 15, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, Transwestern's proceeding will be conducted in Docket No. CP06–459–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15817 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–452–000]

Trunkline Gas Company, LLC; Notice of Filing

September 20, 2006.

Take notice that on September 11, 2006, Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed an abbreviated application pursuant to the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations requesting authorization for Trunkline Gas to abandon compression by relocation and by replacement, install additional new compression at existing compressor stations, install 36-inch diameter pipeline in Jasper and Newton Counties, Texas and Beauregard and Vermilion Parishes, Louisiana, along with related metering and appurtenant facilities. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

The proposed project provides an opportunity for Trunkline Gas to meet increasing shipper requirements for Texas natural gas production to be delivered to the Sabine Henry Hub and the central gulf coast region. Trunkline Gas' open season began on May 23, 2005 and continued through July 28, 2005. As a result of the open season, Trunkline Gas has entered into four precedent agreements for firm transportation of: 335,000 Dth/day for ETC Marketing, Ltd.; 110,000 Dth/day for ProLiance Energy; 40,000 Dth/day for Enbridge Marketing, L.P.; and 25,000 Dth/day for Sequent Energy Management, L.P. The total cost of the proposed project is estimated at $158.9 million. Trunkline Gas proposes to commence construction in May 2007.

Any questions regarding the application are to be directed to William W. Grygar, Rates and Regulatory Affairs, at (713) 989–7000, Trunkline Gas Company, LLC, P.O. Box 4967, Houston, Texas 77210–4967.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15807 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–598–000]

Viking Gas Transmission Company; Notice of Tariff Filing

September 21, 2006.

Take notice that on September 19, 2006, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, Eighteenth Revised Sheet No. 5B, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15816 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 19, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–126–000.
Applicants: Boston Edison Company; Commonwealth Electric Company; Canal Electric Company; Cambridge Electric Light Company.
Description: Commonwealth Electric Company, *et al.* submit a response to the Commission's 8/25/06 deficiency letter.
Filed Date: 9/14/2006.
Accession Number: 20060914–5034.
Comment Date: 5 p.m. Eastern Time on Thursday, October 5, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–80–000.
Applicants: Hawks Nest Hydro LLC.
Description: Hawks Nest Hydro, LLC Submits its Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 9/01/2006.
Accession Number: 20060907–0165.
Comment Date: 5 p.m. Eastern Time on Monday, October 2, 2006.

Docket Numbers: EG06–81–000.
Applicants: MinnDakota Wind LLC.
Description: MinnDakota Wind LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to 18 CFR, Section 266.7.
Filed Date: 9/8/2006.
Accession Number: 20060918–0374.
Comment Date: 5 p.m. Eastern Time on Friday, September 29, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–3760–014.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a report concerning the issue of allowing multiple Scheduling Coordinators use of a single meter under ER98–3760.
Filed Date: 9/7/2006.
Accession Number: 20060919–0084.
Comment Date: 5 p.m. Eastern Time on Thursday, September 28, 2006.

Docket Numbers: ER99–1757–012; EL05–67–002; ER06–1312–001.
Applicants: Empire District Electric Company.
Description: The Empire District Electric Co submits its Fourth Revised Sheet 1 to FERC Electric Tariff, First Revised Volume 1, effective 5/16/05.
Filed Date: 9/14/2006.
Accession Number: 20060918–0382.
Comment Date: 5 p.m. Eastern Time on Thursday, October 5, 2006.

Docket Numbers: ER03–515–001.
Applicants: Black Oak Capital, LLC.
Description: Black Oak Capital, LLC submits its triennial updated market analysis.
Filed Date: 9/13/2006.
Accession Number: 20060918–0375.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: ER06–788–003; ER06–186–002.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a filing in compliance with FERC's 8/14/06 Order and revisions to the rate sheets to reflect the Order and recent approval of their Offer of Settlement under ER06–788.
Filed Date: 9/11/2006.
Accession Number: 20060915–0003.
Comment Date: 5 p.m. Eastern Time on Monday, October 2, 2006.

Docket Numbers: ER06–1083–001; ER06–1083–002.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits a service agreement, Substitute Original Service Agreement No. 1493 and submit an amendment to this filing on 9/14/06, Second Substitute Original Service Agreement No. 1493.
Filed Date: 9/13/2006; 9/14/2006.
Accession Number: 20060918–0376.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: ER06–1367–001.
Applicants: BG Dighton Power, LLC.
Description: BG Dighton Power LLC submits an amendment to its application for market-based rate authority filed 8/15/06.
Filed Date: 9/15/2006.
Accession Number: 20060918–0384.
Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1421–001.
Applicants: The Clearing Corporation.
Description: The Clearing Corp submits its a revised application for market based rate authorizations to modify Sections 1 and 2 of the proposed Tariff, Original No. 1.
Filed Date: 9/15/2006.
Accession Number: 20060919–0085.
Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1486–000.
Applicants: Nevada Power Company; Sierra Pacific Resources Operating Company.
Description: Nevada Power Co and Sierra Pacific Gas and Electric Co submits revisions to the Sierra Pacific Resources Operating Companies' OAT Tariff, FERC Electric Tariff, Third Revised Volume 1.
Filed Date: 9/13/2006.
Accession Number: 20060915–0002.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: ER06–1487–000; ER06–1487–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc submits a Small Generation Interconnection Agreement with Ewington Energy System LLC and Great River Energy and submit an errata to this filing on 9/15/06.
Filed Date: 9/13/2006; 9/15/2006.
Accession Number: 20060915–0001; 20060919–0083.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: ER06–1488–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Co submits revised pages to its OAT Tariff, Third Revised Volume No. 2.
Filed Date: 9/13/2006.
Accession Number: 20060918–0377.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: ER06–1489–000.
Applicants: S.A.C. Energy Investments, L.P.
Description: SAC Energy Investments, LP submits its application for order accepting initial rate schedule, waiving regulations and granting blanket approvals.
Filed Date: 9/13/2006.
Accession Number: 20060918–0378.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15802 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 20, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–145–001.

Applicants: Rockingham Power, LLC; Dynegy Power Marketing, Inc.; Duke Power Company LLC.

Description: Rockingham Power LLC *et al.* submit a Master Power Purchase & Sale Agreement, a 2002 Confirmation Agreement; and a 2004 Confirmation Agreement with North Carolina Municipal Power Agency No. 1.

Filed Date: September 13, 2006.

Accession Number: 20060919–0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 27, 2006.

Docket Numbers: EC06–162–000: ER99–3502–006.

Applicants: Berkshire Power Company, LLC; Berkshire Power Holdings, LLC.

Description: Berkshire Power Holdings, LLC submits its application for authorization to transfer all of its membership interests in Berkshire Power Co, LLC and a change in status.

Filed Date: September 13, 2006.

Accession Number: 20060919–0126.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 4, 2006.

Docket Numbers: EC06–163–000.

Applicants: PPM Energy, Inc., PPM Wind Energy LLC, Aeolus Wind Power II LLC, Trimont Wind I LLC; Elk River Windfarm LLC; Shiloh I Wind Project LLC; Atlantic Renewable Projects, LLC; Flat Rock Windpower LLC.

Description: PPM Energy, Inc & PPM Wind Energy, LLC et al submit a joint application requesting authorization for an intra-corporate restructuring under which PPM will transfer its ownership interests in 4 wind energy companies to Aeolus II.

Filed Date: September 14, 2006.

Accession Number: 20060919–0128.

Comment Date: 5 p.m. Eastern Time on Thursday, October 5, 2006.

Docket Numbers: EC06–164–000.

Applicants: Boralex Industries, Inc., New Column Fund LLC; Column ATC Fund I LLC.

Description: Boralex Industries, Inc, New Column Fund, LLC and Column ATC Fund I, LLC for approval of the transfer of indirect interest in jurisdictional facilities.

Filed Date: September 15, 2006.

Accession Number: 20060919–0178.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER96–780–014.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc on behalf of Alabama Power Co *et al.* informs FERC of a development that may be considered to be a reportable change in status.

Filed Date: September 15, 2006.

Accession Number: 20060919–0086.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER99–4122–020; ER06–1505–000.

Applicants: APS Energy Services Company.

Description: APS Energy Services Company, Inc. submits its waiver parts 41, 101, and 141 of Commission's regulations, *et al.*

Filed Date: September 15, 2006.

Accession Number: 20060914–5073.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER03–739–001.

Applicants: El Dorado Irrigation District.

Description: El Dorado Irrigation District submits its application for its market-based sales tariff, granting authorizations and blanket authority, and waiving certain requirements.

Filed Date: September 15, 2006.

Accession Number: 20060919–0185.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER03–821–001.

Applicants: One Nation Energy Solutions, LLC.

Description: One Nation Energy Solutions, LLC submits its triennial market power update.

Filed Date: September 14, 2006.

Accession Number: 20060919–0174.

Comment Date: 5 p.m. Eastern Time on Thursday, October 5, 2006.

Docket Numbers: ER05–764–004.

Applicants: Montana Alberta Tie, Ltd.

Description: Montana Alberta Tie, Ltd submits a revised open access transmission tariff, in compliance with FERC's July 20, 2006 Order.

Filed Date: September 15, 2006.

Accession Number: 20060919–0213.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1491–000.

Applicants: Aquila Inc.

Description: Aquila, Inc on behalf of Aquila Networks-MPS et al submits revised tariff sheets for their Open Access Transmission Tariff in compliance with FERC's July 20, 2006 Order.

Filed Date: September 15, 2006.

Accession Number: 20060919–0186.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1492–000.

Applicants: Mid-Continent Energy Marketers Associations.

Description: Mid-Continent Energy Marketers Association submits its revised Capacity and Energy Tariff.

Filed Date: September 15, 2006.

Accession Number: 20060919–0187.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1493–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits the final Facilities Study Report to its interconnection service agreement with Besicorp-Empire Power Co, LLC.

Filed Date: September 8, 2006.

Accession Number: 20060919–0175.

Comment Date: 5 p.m. Eastern Time on Friday, September 29, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15803 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 21, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12734–000.

c. *Date filed:* August 31, 2006.

d. *Applicant:* Midwest Hydraulic, Inc.

e. *Name of Project:* Williams Dam Project.

f. *Location:* The project would be located on the East Fork of the White River in Lawrence County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. William Pickrell, Midwest Hydraulic, Inc., P.O. Box 167, Neshkoro, WI 54960, phone: (920)–293–4628.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* Description of Project: The proposed project would consist of: (1) The existing 280-foot-long, 21.7-foot-high Williams Dam, (2) an existing reservoir having a surface area of 50 acres with negligible storage and normal water surface elevation of 475 feet mean sea level, (3) a proposed powerhouse containing 4 generating units with a total installed capacity of 3,200 kilowatts, (4) a proposed Transmission line, and (5) appurtenant facilities. The project is estimated to have an annual generation of 15 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development

application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15810 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

September 21, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2210–142.

c. *Date filed:* September 8, 2006.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, Appalachian Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 6, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–142) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Application:* The licensee requests a variance to grant Garry Viar permission construct a floating dock that will serve a single family home in the Lynville Creek area of Franklin County, Virginia. The proposed structure will be located adjacent to shoreline classified as Conservation/Environmental according to the Shoreline Management Plan, approved on July 5, 2005. The licensee is requesting the variance because the proposed action is not in conformance with the approved Shoreline Management Plan because of its proximity to wetlands. The licensee submitted the request for variance because the wetlands will not be impacted nor will vegetation be removed from the project boundary.

l. *Location of Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov* or toll free (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15811 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 21, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 6066–026.

c. *Date Filed:* June 8, 2006.

d. *Applicant:* McCallum Enterprises I, LP.

e. *Name of Project:* Derby Dam Project.

f. *Location:* The project is located on the Housatonic River, in Fairfield and New Haven counties, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Ms. Carol A. Lacasse, Operations Manager, McCallum Enterprises I, LP, 2874 Main Street, Stratford, CT 06614, (203) 386–1745.

i. *FERC Contact:* Any questions on this notice should be addressed to: Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: *anumzziatta.purchiaroni@Ferc.fed.us.*

j. *Deadline for filing comments and or motions:* October 6, 2006.

k. *Description of Request:* McCallum Enterprises I, LP (McCallum) is requesting the Commission's approval to fill an existing canal located within the project boundary. McCallum is proposing to fill a portion of a canal, about 1,000 feet long, 92 feet wide and 5 feet deep, located on the west side of the project. The canal provides water to downstream commercial and industrial users. McCallum is proposing to install a pipe in order to maintain the supply of water to two existing users below the area proposed for filling.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15812 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL06–5–000]

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff; Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act; Policy Statement on Hydropower Licensing Settlements

Issued September 21, 2006.

1. Hydroelectric licensing proceedings under Part I of the Federal Power Act (FPA) are ulti-faceted and complex. These proceedings involve the balancing of many public interest factors, as well as consideration of the views of all interested groups and individuals. Moreover, since the physical design, environmental impact, and history of every project is different, each licensing proceeding is, to at least some extent, unique.

2. Given this backdrop, the Commission looks with great favor on settlements in licensing cases. When parties are able to reach settlements, it can save time and money, avoid the need for protracted litigation, promote the development of positive relationships among entities who may be working together during the course of a license term, and give the Commission, as it acts on license and exemption applications, a clear sense as to the parties' views on the issues presented in each settled case.

3. At the same time, the Commission cannot automatically accept all settlements, or all provisions of settlements. Section 10(a)(1) of the FPA requires that the Commission determine that any licensed project is best adapted

to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e).[1]

4. Consequently, in reviewing settlements, the Commission looks not only to the wishes of the settling parties, but also at the greater public interest, and whether settlement proposals meet the comprehensive development/equal consideration standard. Because of the requirements of Part I of the FPA, the Commission's review of hydropower licensing settlements is often different from that accorded to other settlements presented to us, such as those in rate cases. In the latter type of cases, the Commission may accept settlements as a whole, given that it has authority under section 5 of the Natural Gas Act and section 206 of the FPA to examine at any time whether rates, charges, rules, regulations, practices, or contracts are unjust, unreasonable, unduly discriminatory, or preferential. Because section 6 of the FPA precludes revision of hydropower licenses without the licensee's consent, it is necessary that the Commission examine proposed license conditions in detail before approving them. The Commission does include reopener provisions in hydropower licenses, but these are only exercised where environmental conditions have significantly changed. Were the Commission to assert a broad, general authority to reopen any part of a license during its term, equivalent to the authority provided by sections 5 and 206, this would sharply undercut the certainty sought by parties to licensing proceedings. As a separate matter, the Commission's role in overseeing license compliance makes it important that license conditions be clear and enforceable.

5. The Commission must also ensure that its decisions on settlements, like all decisions under the FPA, are supported by substantial evidence.[2] To support a proposed license condition, then, it is necessary for the parties to develop a factual record that provides substantial evidence to support the proposed condition, and demonstrates how the condition is related to project purposes or to project effects. The settling parties should provide the Commission with record support showing a nexus between the proposal and the impacts of the project, as well as to project purposes, and also explain how the proposal will accomplish its stated purpose.

6. In addition, proposed license conditions must be enforceable. By way of example, the Commission is precluded by law from assessing damages, so any condition that would do so would be unenforceable. To the extent that the Commission does not adopt proposed conditions that it has no jurisdiction to enforce, this does not evidence general opposition to settlements or to the settlement at hand, but rather recognition that the Commission can only exercise that authority given it by Congress. Also, the Commission has jurisdiction over only its licensees, and therefore cannot enforce any condition to the extent that it purports to place responsibility on a non-licensee. In addition, conditions that do not clearly outline the licensee's responsibilities and establish the parameters governing required actions may be difficult or impossible to enforce. However, as discussed below, contracts that the Commission cannot enforce may well be made enforceable by other means, such as binding arbitration, or resort to State or Federal court.

7. It should be noted that the fact that the Commission does not, whether as a matter of law or policy, include certain provisions in licenses does not mean that they are precluded from being included in a settlement. Settling parties are free to enter into ''off-license'' or ''side'' agreements with respect to matters that will not be included in a license. However, the Commission has no jurisdiction over such agreements and their existence will carry no weight in the Commission's consideration of a license application under the FPA.

8. Based on the foregoing, the logical process for arriving at an acceptable settlement is for the parties to undertake the following steps:

- Use existing information and pre-license studies to determine the environmental effects of the proposed project.
- Based on this record, develop appropriate environmental measures to address those effects.
- Craft settlement provisions based on the record and the proposed measures, taking into account recent Commission precedent.
- Prepare an explanation of the settlement that will enable the Commission to understand the parties' intent and what in the record they believe supports their proposals.[3]

9. We are aware that settling parties have a strong interest in knowing in advance which provisions of proposed settlements are likely to be acceptable to the Commission. Precedent can serve as a very useful guide in this regard. If parties engaged in settlement discussions wish to obtain additional guidance as to particular concepts or proposed provisions, it may be useful to seek the advice of Commission staff, by requesting that staff either participate in an advisory role in settlement discussions or review proposed settlements before they are filed with the Commission. While Commission staff cannot speak for the Commission itself, staff will be able to give parties the benefit of its experience, as well as advice regarding recent Commission actions. Advice from experienced staff, coupled with careful reading of recent Commission precedent, is the best way to predict the Commission's likely reaction to particular provisions proposed in settlement agreements.

10. At the same time, we recognize the value of more general guidance. Therefore, we have prepared this document, in an attempt to elucidate certain principles regarding settlements. Some of the matters discussed below have been dealt with in Commission orders; others represent application of the principles enunciated in those orders. While we hope that this document will be useful to parties engaged in settlement negotiations, we caution that the Commission will review every case on its facts and make in each instance the public interest determination required by the FPA. Thus, the statements in this document represent guidance, but not a guarantee. It may be that the facts of a particular case dictate a different result from that in a previous proceeding where a similar issue arose, or that policy changes over time.

11. Certain general types of issues have arisen with some frequency over

[1] *See* 16 U.S.C. 803(a)(1) (2000). FPA section 4(e), 16 U.S.C. 797(e), provides, in pertinent part, that the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damages to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

[2] *See* FPA section 313(b), 16 U.S.C. 825l (2000) (''[t]he finding of the Commission as to the facts, *if supported by substantial evidence*, shall be conclusive'') (emphasis added).

[3] In its regulations, the Commission has set forth details concerning the content of settlements, and the procedures relating to their filing. *See* 18 CFR 385.602 (2006).

the last several years. The following discussion outlines some principles with respect to these issues, in the hope of providing general principles that may assist settling parties. In the last section of this guidance, we list more specific settlement provisions that have been of concern. While individual cases are cited throughout this document, this guidance is not intended to be an encyclopedic reference to all cases involving settlements.

12. The following basic principles, which are discussed in more detail below, apply to the consideration of measures proposed to be included as conditions in project licenses:

- Measures must be based on substantial evidence in the record of the licensing proceeding.
- Measures must be consistent with the law and enforceable. In particular, measures must be within the Commission's jurisdiction.
- A relationship must be established between a proposed measure and project effects or purposes.
- Measures should be as narrow as possible, with specific measures (*e.g.*, installing riprap to prevent erosion) preferred over general measures, such as creation of an aquatic resource fund.
- Actions required under measures should occur physically/geographically as close as possible to the project.
- Measures must reserve the Commission's compliance authority, as well as its authority to review and modify as necessary proposed resource or activity plans (for example, a provision that a stakeholder committee can determine new measures during the license term should also provide that the proposed measures be filed with the Commission for its review, modification, and approval).

Substantial Evidence

13. As noted above, the FPA provides that the Commission's determinations will be upheld if they are supported by substantial evidence. In consequence, the Commission must have substantial evidence to support its licensing decisions. If parties want the Commission to accept the terms of a settlement, they must provide substantial evidence to support the measures they ask the Commission to impose. Thus, for example, it would not be sufficient to ask the Commission to set a particular minimum instream flow solely because the parties have compromised on that number. Rather, the parties would need to provide a scientific explanation, supported by facts in the record, of how that level of flows meets the needs of affected resources and how it is consistent with the comprehensive development of the waterway. Similarly, if there is no showing of harm of a fishery, the record will not support a measure requiring the mitigation of harm to fish species. *See Allegheny Energy Supply Company, LLC*, 109 FERC ¶ 61,028 at P 6 (2004); *see also City of Centralia, WA* v. *FERC*, 213 F.3d 742 (D.C. Cir. 2000).

Lawful And Enforceable

14. A settlement provision that extends beyond the Commission's jurisdiction to require or to enforce cannot become a lawful term in a Commission license. It would seem axiomatic that proposed settlement provisions and license conditions must be consistent with law. Yet, in some instances, settlements include provisions that purport to extend the Commission's jurisdiction. It is important for parties to bear in mind that the bounds of the Commission's jurisdiction are established by law and cannot be expanded through an order implementing a settlement. Thus, the Commission has jurisdiction only over its licensees and cannot enforce the provisions of a settlement against other parties, such as Federal and State agencies, or private parties. *See*, *e.g.*, *Avista Corporation*, 93 FERC ¶ 61,116 at 61,329 (2000). Matters that are beyond the Commission's jurisdiction can be resolved by parties in ''off-license'' agreements that will not be included in a license, *see*, *e.g.*, *City of Seattle, WA*, 75 FERC ¶ 61,319 at 62,014, n.6 (1996). As another example, because the FPA does not allow the Commission to impose damages, a damages provision may not properly be included in a license. *See*, *e.g. Consumers Power Company*, 68 FERC ¶ 61,077 at 61,378–80 (1994). In addition, the Commission cannot expand its own jurisdiction. Thus, even if parties agree that a license should include measures that are outside of the Commission's jurisdiction—for example, a requirement that a State agency manage a wildlife refuge—the Commission could not enforce the measures.

Dispute Resolution/Enforceability

15. Parties to settlements often agree as to the form of dispute resolution they will use during the license term. Initially, the Commission declined to include in licenses dispute resolution provisions that purported to bind parties other than the licensee, on the ground that those provisions were unenforceable, given that the Commission had jurisdiction only over its licensees. *See, e.g., Avista Corporation*, 93 FERC ¶ 61,116 (2000). The Commission later modified its policy, to the extent of deciding that it would require licensees to comply with settlement provisions of this kind, even though it could only enforce them against licensees. *See Erie Boulevard Hydropower, LP*, 100 FERC ¶ 61,321 at 62,502 (2002). Parties who want such provisions in licenses should bear in mind, however, the limited nature of the Commission's enforcement authority in such matters. Thus, for example, the Commission could require a licensee to comply with notice provisions or to attend meetings required by a dispute resolution provision. It could not require a Federal or State resource agency or a non-governmental entity to do so.

Relationship to the Project

Comprehensive Development

16. As noted above, pursuant to Part I of the FPA, the Commission is required to license projects that best result in the comprehensive development of a waterway. In order to determine whether proposed settlement provisions or license conditions meet this standard, it is necessary for the Commission to determine to what extent these proposals relate to project effects or project purposes. This is easier to do if the provisions in question call for specific measures (rather than a general expenditure of funds), if the measures call for actions in the project vicinity, and if the settling parties document how the measures are tied to project effects or purposes. Thus, it may be easy to understand and explain how construction of a campground or a boat put-in at a project reservoir is tied to the project purpose of recreation. It is harder to draw that connection if, for example, a settlement measure calls for recreation facilities many miles above or below the project, or for facilities, such as a snowmobile trail, that may not have an obvious connection to the project. Similarly, it is more difficult to explain how paying a dollar amount for future, unspecified enhancements is tied to a project purpose. As the Commission explained in *Virginia Electric Power Company*, 110 FERC ¶ 61,241 at P 11 (2005):

> We * * * note with approval the fact that the many measures required by the settlement and the corresponding license articles appear to call for activities related to project impacts and purposes. It is our strong preference that measures required in a license be clearly tied to the project at issue. We are sometimes troubled by settlements which require measures, such as general funds to be used for unspecified measures, that are not tied to either project impacts or purposes. In addition, we prefer measures requiring specific actions (*i.e.*, the licensee

shall construct a fish hatchery) to those mandating general actions whose effects are unclear (*i.e.*, the licensee shall contribute $100,000 to support fisheries enhancements). It is much easier for us to conclude that a project proposal based on specific measures is in the public interest, as opposed to one made up in large part of measures whose impacts we cannot truly assess. We also note that we have a preference for mitigation or enhancement measures that are located in the vicinity of the project unless this is impractical or unless substantially increased overall project benefits can be realized from adopting off-site measures.

Project Purposes

17. Instances of orders concluding that settlement measures were not sufficiently tied to project purposes or project effects include: *Portland General Electric Company*, 107 FERC ¶ 61,158 at P 21, n.21 (2004) (disposition of non-project lands and of water rights); *PacificCorp*, 105 FERC ¶ 61,237 at P 113, n.27 (2003) (portions of settlement not relating to project operations or environmental effects not included in license); *Pacific Gas and Electric Company*, 97 FERC ¶ 61,084 at 61,409–10 (2001) (monitoring of water temperature, flows, and meteorological conditions in reservoirs and river reaches within boundaries of upstream project; investigating feasibility of, and possibly making, modifications to upstream project); *Northern States Power Company*, 111 FERC ¶ 62,212 at P 31 (2005) (recreation enhancement measures outside project boundary that did not provide access to project lands or waters, where adequate access already provided at project); *PacifiCorp*, 104 FERC ¶ 62,059 at P 28 (2003) (provisions providing for recreation enhancements outside project boundary, and for sale of non-project lands); *USGen New England*, 99 FERC ¶ 62,025 at 64,060–61 (2002) (partially rejecting proposal for enhancement fund, to extent fund would cover activities outside project boundary, with no nexus to project, or, in case of mitigation for tax revenue impacts, beyond Commission's jurisdiction).

Recreation

18. Many settlements contain provisions regarding recreation. As with other settlement provisions, it is important that parties base proposed recreation provisions on record evidence supporting the need for the proposed facilities and that they link the measures in question to the project. Thus, if a settlement proposes enhancements to campgrounds in the project area, parties should explain how those facilities are used in connection with the project and demonstrate the need for the facilities. For example, if data show that existing campgrounds are not greatly used, it may be hard to justify expanding them or adding new campgrounds.

19. Given that a project is primarily a water-based facility, it may not be hard to conclude that construction of a boat ramp, a fishing pier, or a hiking trail along the reservoir perimeter could be an appropriate environmental measure that serves a project purpose, if the need for that facility is established. These facilities would enable the public to better use the project lands and waters. It may be more difficult to justify recreation that is more remote from the project site (as in a campground located 20 miles away from any project works). Similarly, it may be hard to draw a public interest connection between a project and a recreation feature that does not appear to be tied to the nature of the project. For example, a community near a project might consider itself to be in need of a public auditorium. It would be difficult to justify inclusion of such a requirement in a license, unless the parties could demonstrate, not just why the proposed measure is generally worthwhile, but, more specifically, how it is linked to the effects and purposes of the project. *See Wisconsin Public Service Corporation*, 104 FERC ¶ 61,295 at P 32–33 (2003) (noting, with respect to decision not to require retention of certain recreation facilities within project boundary that environmental assessment had found ''these facilities are not directly associated with public recreational access to project waters or facilities,'' and concluding that facilities not included ''have [insufficient] nexus to reservoir-based recreation and [similar facilities] are found elsewhere in the area.''); *Northern States Power Company*, 111 FERC ¶ 62,212 at P 31 (2005) (declining to include proposed recreation measures in license where it is unclear how measures address access to project lands or waters and when adequate recreational access provided by existing facilities).

20. Two other matters that can arise in connection with recreation facilities are inclusion within the project boundary and cost-sharing, both discussed below. If the licensee is expected to undertake measures throughout the license term, such as ongoing maintenance with respect to a recreation facility that the Commission has determined is necessary for project purposes,—and the Commission consequently will have ongoing responsibility to ensure compliance—the licensee may be required to include the facility within the project boundary. As noted, this means that the licensee will have to obtain sufficient rights with respect to the facility to ensure that it can comply with Commission requirements, but it does not mean that the licensee must obtain fee ownership. With respect to cost-sharing, settlements occasionally provide that the licensee will share the costs of maintaining a facility with a State or Federal agency (often the entity that owns the facility, such as a campground owned by the U.S. Forest Service). Again as noted below, if the Commission requires that a facility be maintained, it can look only to the licensee to do so. Thus, a license condition must place responsibility for completion of a measure on the licensee. As noted above, any cost-sharing agreement may have to be a matter of contract between the licensee and the third party, but will not be something that Commission staff will recommend including in a license. *See Alcoa Power Generating, Inc.*, 110 FERC ¶ 61,056 at P 31 (2005) (finding that, although licensee agreed with U.S. Forest Service and State agencies to share costs of recreation areas and facilities, ultimate responsibility for performance of license obligations must be borne by licensee).

Specific Measures

Cost Caps

21. In some settlements, parties place financial limits on the licensee's obligation to perform certain tasks (for example, ''the licensee shall build a campsite at a cost of $10,000'') or limit the licensee's obligation to the payment of funds to a third party (for example, ''the licensee shall pay $10,000 to the State to construct a fishing pier), rather than the performance of a particular measure. As the Commission has made clear, a licensee cannot satisfy the obligation to perform certain tasks by a simple payment to another party, nor can the obligation be limited by a particular dollar figure. The Commission will take an independent look at proposed measures and their costs, to determine if the proposals are reasonable. If a measure is required, however, it will be because the Commission has determined that the measure is required to meet the FPA's comprehensive development standard. In consequence, although the Commission sometimes includes in license articles spending caps that parties have agreed to, it does so to memorialize the intent of the parties, but not to approve the limit. The Commission expects the required measure to be performed by the licensee, even if the cost exceeds the

agreed-upon cap. As the Commission stated in *Virginia Electric Power Company*,

> [s]ettlements filed with us often include specific dollar limitations (*i.e.*, the licensee shall build a fishing pier, at a cost of up to $15,000), and we sometimes include those limitations in license articles at the parties' request, in an effort to revise proposed articles as little as possible. It is important for all entities involved in settlements to know, however, that we consider the licensee's obligation to be to complete the measures required by license articles, in the absence of authorization from the Commission to the contrary. Dollar figures agreed to by the parties are not absolute limitations.

110 FERC ¶ 61,241 at P 10 (2005). *See also New York Power Authority*, 105 FERC ¶ 61,102 at P 66 (2003) (reserving Commission's right to amend agreed-upon funding requirements to ensure that project is operated in public interest); *Allete, Inc.*, 107 FERC ¶ 62,036 at P 26 (2004); *City of Sturgis, Michigan*, 105 FERC ¶ 62,132 at P 37 (2003); *Charter Township of Ypsilanti, Michigan*, 105 FERC ¶ 62,019 at P 39 (2003); *PacifiCorp*, 105 FERC ¶ 62,207 at P 27 (2005).

Cost Sharing

22. As noted, the Commission has no jurisdiction over any party to a hydroelectric licensing settlement other than the licensee. Some settlements include agreement that the licensee and some other party will share the costs of performing certain measures, such as an agreement that the licensee and a State and Federal agency will jointly manage a recreation area. The Commission cannot enforce such an agreement against a non-licensee. Another problem can arise if the agreement is premised on the receipt of matching funds; that is, the licensee won't be expected to make a payment unless another entity also does so. As discussed in regard to cost caps, if the Commission requires the licensee to undertake a particular measure, it will look to the licensee alone for the performance of that measure. *See, e.g., Virginia Electric Power Company*, 106 FERC ¶ 62,245 at P 44 (2004) (finding that, while settlement provisions require licensee to provide funds to agency for construction and maintenance of facilities, licensee is ultimately responsible for compliance with license conditions); *PacifiCorp*, 105 FERC ¶ 62,207 at P 28 (2005) (noting, with respect to settlement provision requiring licensee to designate environmental coordinator, that, while licensee may hire others to perform required measures, burden of compliance rests with licensee). While licensees and other parties are free to enter into cost-sharing side agreements, including such provisions in a license is problematic because the Commission has no ability to enforce them.

23. Similarly, the parties may agree that a third party will undertake a certain task, and perhaps be paid by the licensee to do so. For example, it might be agreed that the licensee will pay a State agency or a tribe to operate a fish hatchery. If the Commission finds that operation of the fish hatchery is required for the comprehensive development of the affected waterway, it will not include in the license a provision requiring the licensee to pay another entity to operate the hatchery, but rather will require the licensee to operate the hatchery and leave to it how to fulfill that obligation. *See Portland General Electric Company*, 114 FERC ¶ 61,137 at P 11, 15 (2006). This is because the Commission has jurisdiction only over its licensee, and thus cannot ensure that a measure will be carried out unless ultimate responsibility for doing so rests with the licensee.

24. Settlement provisions requiring licensees to pay for the salaries of personnel who work for other entities, such as a State wildlife biologist or a law enforcement officer, also raise several issues. First, as noted, the Commission prefers concrete measures with measurable requirements and impacts such as ''construct and operate a fish hatchery'' to more indefinite ones such as ''pay the salary of a State fisheries biologist.'' In addition, the Commission has no way of assuring that the hiring of personnel paid for by the licensee will actually accomplish a project purpose or ameliorate a project effect. Again, this is why measures that require specific, direct, on-the-ground actions are preferable to more general ones. It makes most sense for the license to establish what measures a licensee must perform, and for any settlement between the licensee and third parties regarding the performance of those measures to be addressed in off-license agreements.

Funds

25. As noted above, in order to include a specific environmental measure in a license, the Commission needs to be able to conclude that the measure relates to project impacts or project purposes. This is why the Commission has expressed a preference for specific measures and that, where possible, such measures be implemented within the project boundary or close to the project and the area that it affects. An increasing number of settlements include funds intended to cover the costs of measures to be undertaken during the course of the license term. The principles enunciated above apply to consideration of such funds.

26. For example, where the record shows that a project has an impact on certain aquatic species or could enhance such species, it may be possible to obtain Commission approval of a fund that is designated for the purpose of enhancing and mitigating impacts on those species within the project vicinity, such as a fund to pay for a set of specified fishery habitat enhancements within the project boundary, provided that the licensee retains sufficient control over the fund that the Commission can ensure compliance with the related license article and ensure satisfaction of the underlying project purposes supporting the fund. As the ties between the proposed fund and record evidence and project effects and purposes become more tenuous, as with a fund to undertake unspecified fishery measures within the basin where the project is located, the propriety of the fund may increasingly come into question. Thus, if the record does not show that the project has an adverse effect on fishery resources or does not demonstrate that effective enhancement measures can be undertaken in the project vicinity, it may be more difficult to justify inclusion of a fishery fund in a license. Similarly, a fund that may be used anywhere in a State or in a broad geographic area may be less likely to be recommended than one more closely tied to the project. To the extent that parties feel measures should be undertaken beyond the project vicinity, they should explain in detail why those measures are related to project purposes, why they cannot be carried out at the project site, and why their proposals would satisfy the comprehensive development standard.

Physical Proximity

Project Boundaries

27. In the course of Commission action on settlements, issues often arise with respect to project boundaries. Specifically, parties may be concerned about what facilities need to be within project boundaries, and what the impact of such inclusion will be. Therefore, a brief discussion of this issue may be helpful.

28. Part I of the FPA directs the Commission, when issuing a license for a hydroelectric project, to require the licensee to undertake appropriate measures on behalf of both developmental and non-developmental public interest uses of the waterway,

including fish, wildlife, and recreation.[4] These requirements, as set forth in a license, constitute the ''project purposes.''

29. The Commission has regulatory authority only over the licensee, and thus can administer and enforce the terms of the license only through the licensee and the licensee's property rights. Standard license Article 5 requires the licensee to acquire and retain all interests in non-Federal lands and other property necessary or appropriate to carry out project purposes.[5] The licensee may obtain these property interests by contract or, if necessary, by means of Federal eminent domain pursuant to FPA section 21.[6]

30. A licensee's property interests can range from fee simple to perpetual or renewable leases, easements, and rights-of-way. Thus, title to lands within the boundary can be owned by someone other than the licensee, so long as the licensee holds the necessary property interests (*e.g.*, flowage easements) and permits (*e.g.*, a Forest Service special use permit) to carry out licensed project purposes. The license covers only those property interests held by the licensee; each license with a project boundary states (in an ordering paragraph) that ''the project consists [inter alia] of (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by [a designated exhibit] * * *.''

31. If the Commission requires additional control in order to accomplish a project purpose, or amends the license to expand or add a project purpose, it can direct its licensee to obtain any necessary additional property rights, whether inside or outside the existing project boundary, and amend the boundary as appropriate. *See, e.g., Upper Peninsula Power Company,* 104 FERC ¶ 62,135 at P 72 (2003) (finding that, notwithstanding settlement provision that licensee's obligation to develop buffer zone and wildlife and land management plan applied only to license-owned lands within project boundary, obligation in fact extended to all lands within boundary). Conversely, if the Commission determines that less land is needed to meet project purposes, or if it redefines project purposes, it can remove land from the boundary. If the Commission deletes a parcel of land from the project and its boundary, the Commission is placing that land outside of its jurisdiction and regulatory reach. *See, e.g., Pacific Gas & Electric Company,* 102 FERC ¶ 61,309 at P 21; 56–61 (2003) (rejecting portion of land management plan agreement that would have removed from project boundaries lands needed for project purposes). *Compare Wisconsin Public Service Corporation,* 104 FERC ¶ 61,295 at P 29–38 (2003) (approving in part application to amend project boundaries).

32. Project boundaries are used to designate the geographic extent of the lands, waters, works, and facilities that the license identifies as comprising the licensed project and for which the licensee must hold the rights necessary to carry out project purposes. The establishment of a project boundary makes it easier for the Commission, the licensee, and other interested parties to understand the geographic scope of a project. All facilities, lands, and waters needed to carry out project purposes should be within the project boundary. A project boundary does not change property rights, nor does the conveyance of a property right change a project boundary.

33. To an extent, the Commission has allowed an exception for lands and waters on which a licensee is to carry out one-time measures. For example, if a licensee is required once to place material in a stream in order to create fish habitat, but is not required to undertake other measures in that area during the license term, the Commission may not include that reach within the project boundary. If, however, the licensee is obligated to undertake measures throughout the license term, such as implementing an ongoing habitat restoration plan, the Commission may require that the affected lands be included in the project boundary. S*ee, e.g., PacifiCorp,* 105 FERC ¶ 61,237 at P 114 (2003) (noting that licensee would have to amend project boundary to include lands previously outside of project boundaries, on which activities required by license).

34. Thus, if settling parties have a desire to include or exclude certain lands, waters, or facilities within project boundaries, they should examine carefully the licensee's obligations and how the lands or facilities in question relate to project purposes. If lands or facilities are to be included within the project boundary, there must be a showing of how they are needed for project purposes; if they are to be excluded there must be a showing of why they are not needed for those purposes, or that the measures affecting project lands or facilities are one-time measures that will not require Commission oversight throughout the life of the license.

Roads

35. One specific instance in which project boundary issues arise is roads. Some settlements require licensees to pay for the upkeep of roads leading to the project or to specific project works, such as recreation areas. Several issues can arise with respect to such measures. First, in order to decide whether a license should include a requirement that road activities be funded, the Commission must determine that the road is necessary for project purposes, as with a road that is needed in order to reach the powerhouse or a road that is the only way to reach a project recreation site. If the road merely passes near the project and is used only incidentally for project purposes, it may not be appropriate to require the licensee to maintain it. The Commission must also be able to determine what part of the road is needed for project purposes. Thus, it will be appropriate to develop license conditions covering only the relevant portion of a long road that at some point provides necessary access to a project, rather than the entire road.

36. Finally, if a road is deemed necessary for project purposes such that the licensee is required to undertake ongoing activities with respect to the road throughout the license term, the Commission may require that the road be included within the project boundary, so that the Commission can exercise its compliance jurisdiction to ensure that the required activities take place. As indicated above, inclusion of a road or a portion of a road within a project does not mean that the licensee must obtain fee title to the road, only that it must obtain sufficient rights, such as an easement, a lease, or a right-of-

[4] As discussed earlier, FPA section 10(a)(1) sets forth the standard by which the Commission acts on hydropower license applications, and incorporates by reference those public purposes set forth in FPA section 4(e).

[5] Standard Article 5 appears in what are called ''L-Forms,'' which are published at 54 FPC 1792–1928 (1975) and are incorporated into project licenses by an ordering paragraph. See 18 CFR 2.9 (2006). Article 5 states in pertinent part: ''The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission * * *.''

[6] 16 U.S.C. 814 (2000).

way, to ensure that it can implement the required measures. There are instances in which road owners, such as towns, counties, or the U.S. Forest Service, have been reluctant to have roads included within project boundaries. Parties should consider this issue carefully when deciding to what extent they want the Commission to impose ongoing obligations on licensees with respect to roads.

Reserve Commission Authority

Commission Approval

37. As the agency charged with the administration of hydropower licenses, the Commission must approve licensees' post-licensing plans. That authority cannot be ceded to other entities. Thus, settlement conditions that provide that the licensee must file specified plans after obtaining the approval of other parties, such as resource agencies, tribes, or non-governmental organizations, are acceptable if they provide that the plans will be filed with the Commission for its approval, and that the Commission will have the right to revise the plans as it deems necessary. Provisions that envision plans (or operational changes outside of the parameters approved in the license) being approved by other entities but not the Commission are not acceptable. In *Virginia Electric Power Company,* the Commission stated that:

> * * * we are pleased that the settling parties were able to develop means for carrying out the goals of the settlement in a manner consistent with the Commission's responsibilities under the Federal Power Act. For example, Article 411, which calls for a bypassed reach flow release plan, requires the licensee to develop the plan in consultation with State and Federal resource agencies, and then to file the plan for Commission approval, with the explicit understanding that the Commission may require changes in the plan.

110 FERC ¶ 61,241 at P 35.

38. Where, on the other hand, the parties establish a mechanism that purports to give the licensee and other parties the ability to alter license terms or obligations without first obtaining the Commission's approval, the Commission has revised proposed license articles to include its approval authority. *See New York Power Authority,* 105 FERC ¶ 61,102 at P 65 (2003) (modifying proposed license articles to require Commission approval of fishway plans).

Adaptive Management

39. Settlement provisions often contemplate that adjustments to measures required during the license term will be based on information gleaned from ongoing monitoring or other post-license studies. This is sometimes called adaptive management. Settling parties may agree, for example, that a committee will meet and decide on an annual level of spring flows for fishery purposes. To the extent that the proposed flows are within parameters considered in the licensing proceeding and determined to be appropriate, this does not pose a problem. A license might provide that a licensee be required to release increased flows of between 100 and 200 cfs for a period, to be determined on an annual basis, between March 15 and June 15. It would be appropriate for the committee to decide each year what flows within these parameters should be released, with notification to the Commission. However, it would not be appropriate to give the committee authority to require flows beyond the limits set forth in the license, because the Commission would not have had a prior opportunity to determine whether those flows were in the public interest. In order for this to occur, the licensee would have to file an amendment application with the Commission, seeking authority to alter the terms of the license. For the same reason, it would not be appropriate to propose that the license not contain flow parameters at all, and simply leave flow decisions up to an adaptive management group. As the Commission explained in *Virginia Electric Power Company:*

> We receive many settlements in which parties agree to adaptive management measures, calling for future studies and possible changes in project operations based on experience. For the Commission to exercise its oversight authority, it is necessary that license conditions embodying these measures provide for Commission review and, where required, modification of proposed actions that go beyond the limits imposed by the license.

110 FERC ¶ 61,241 at P 23. *See also PacificCorp,* 103 FERC ¶ 62,183 at P 35 (2003)

(''The Agreement provides for possible modifications to project structures and operations during the license term. For example, the proposed articles contain provisions to alter whitewater flow releases in the event that monitoring attributes to these releases deleterious impacts to biological resources. While such adaptive management provisions are not uncommon in licenses issued in recent years, the proposed articles would put project modifications under the direction of [a committee]. It is, however, the Commission's role and responsibility to give prior approval, through appropriate license amendments, for all material amendments to the project and the license'').

Other Issues

40. In addition to the matters discussed above, there have been a number of other instances over the last few years in which proposed provisions that do not fit precisely into the more general categories discussed above were not included in licenses. These provisions are briefly summarized below, in order to provide additional guidance:

(1) Provisions that would require amending the license for another project. Section 6 of the FPA precludes the Commission from altering a license without the licensee's consent. *See Pacific Gas & Electric Company,* 97 FERC ¶ 61,084 (2001); *Arizona Public Service Company,* 109 FERC ¶ 62,241 (2004); *FPL Energy Maine Hydro, LLC,* 106 FERC ¶ 62,021 (2004).

(2) Financial restrictions with respect to future surrender of a project. *See Northern States Power Company,* 111 FERC ¶ 62,212 at P 33 (2005) (Commission has previously declined to impose generic project retirement plans and licensee is anticipated to have sufficient financial resources to satisfy any conditions on surrender); *Northern States Power Company,* 111 FERC ¶ 62,123 at P 34 (2005) (same).

(3) A provision purporting to restrict parties' statutory right to seek rehearing. *FPL Energy Maine Hydro, LLC,* 106 FERC ¶ 62,021 at P 23 (2004).

(4) A proposed license condition stating that the Commission would not object to ''reasonable'' fees charged by licensees and operators of recreational facilities within the project boundaries. *See FPL Energy Maine Hydro, LLC,* 106 FERC ¶ 62,021 at P 24 (2004) (Commission generally does not review reasonableness of such fees).

(5) Provision tying future actions to the date that the licensee accepts the license, contrary to general Commission practice of using the more certain date of license issuance. *See Virginia Electric Power Company,* 106 FERC ¶ 62,245 at P 46 (2004).

(6) Settlement provision requiring that requesting party pay licensee for whitewater releases above those set forth in settlement not accepted, because licensee must bear cost of any releases required by Commission. *See Alcoa Power Generating, Inc.,* 110 FERC ¶ 61,056 at P 23, n.14 (2005).

Comment Procedures

41. We invite interested persons to submit written comments on the Commission's policy with regard to settlements in hydropower licensing

proceedings. Comments are due 45 days from the date of publication of the policy statement in the **Federal Register.** Comments must refer to Docket No. PL06–5–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

42. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

43. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described below. Commenters on this policy statement are not required to serve copies of their comments on other commenters.

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

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15800 Filed 9–26–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0798; FRL–8223–8]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects research.

DATES: The public meeting will be held October 18–19, 2006, from 8:30 a.m. to approximately 5 p.m., eastern time on October 18, 2006, and 8:30 to approximately 2 eastern time on October 19, 2006.

Location: One Potomac Yard, 2777 Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the Designated Federal Officer (DFO) at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

Procedures For Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Maria Szilagyi, Designated Federal Officer (DFO), EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6809; fax: (202) 564 2070; e-mail addresses: *szilagyi.maria@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2006–0798, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–ORD–2006–0798. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0798. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 3334), 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752. EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda are now available. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/.* For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns.

e. 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.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2006–0798 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to October 10, 2006. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, October 10, 2006, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, eastern time, October 10, 2006. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

EPA will be presenting for HSRB review the results of a completed human toxicity study, evaluating the allergic contact dermatitis response in individuals with known sensitivity to hexavalent chromium to repeated exposure to a wood treatment solution containing hexavalent chromium. In addition, the Board will be asked to review two revised research protocols to evaluate the efficacy of new formulations of the repellent, IR3535, against ticks and mosquitoes and to advise on a draft guidance document explaining to the public how to submit proposed and completed human research to EPA for review by the HSRB. Finally, at the Board's request, EPA will present the statutory and regulatory procedures that EPA and its federal advisory committees are required to follow when handling materials claimed to be confidential business information (CBI) under FIFRA or other laws. The HSRB intends to discuss how it would like to operate in the event that EPA requests the Board to review materials containing CBI.

Dated: September 22, 2006.

George Gray,

Science Advisor.

[FR Doc. E6–15832 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8223–6]

Proposed CERCLA Administrative Agreement for Recovery of Response Costs; Denova Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as

amended by the Superfund Amendments and Reauthorization Act (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed Agreement for Recovery of Response Costs (''Agreement,'' Region 9 Docket No. 9–2006–0010) pursuant to section 122(h) of CERCLA concerning the Denova Superfund Site, (the ''Site''), located in Rialto, California. The settling parties to the Agreement are Environmental Enterprises Inc., and Daniel J. McCabe.

The Agreement compensates EPA for past response costs related to the removal action taken at the Site. The Agreement provides for a total recovery of $75,000.00. The Agreement also provides the settling parties with contribution protection under CERCLA 113(f)(2) for response cost paid under the Agreement.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments will be available for public inspection at the Agency's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before October 27, 2006.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Denova Superfund Site, Rialto, California, and USEPA Docket No. 9–2006–0010.

FOR FURTHER INFORMATION CONTACT: Michele Benson, Office of Regional Counsel, telephone (415) 972–3918, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 10, 2006.

Keith A. Takata,

Director, Superfund Division.

[FR Doc. E6–15904 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Draft National Assessment of Efforts To Predict and Respond to Harmful Algal Blooms in U.S. Waters

ACTION: Notice of draft report release and request for public comment.

SUMMARY: The Office of Science and Technology Policy (OSTP) publishes this notice to announce the availability of the Draft *National Assessment of Efforts to Predict and Respond to Harmful Algal Blooms in U.S. Waters* which was mandated by Congress in the *Harmful Algal Bloom and Hypoxia Amendments Act* of 2004 (Pub. L. 108–456). This report reviews and evaluates short term harmful algal bloom (HAB) prediction techniques, and identifies current prevention, control and mitigation (PCM) programs and research for freshwater, estuarine and marine HABs operating at the national, State, local and tribal level.

DATES: Comments on this draft document must be submitted by 11/20/2006.

ADDRESSES: *The Draft National Assessment of Efforts to Predict and Respond to Harmful Algal Blooms in U.S. Waters* will be available at the following location (*http://ocean.ceq.gov/about/sup_jsost_iwgs.html*). The public is encouraged to submit comments on the draft report electronically to *Prediction.Response.Comments@noaa.gov.* For those who do not have access to a computer, comments on the document may be submitted in writing to: Quay Dortch, NOS/NCCOS/CSCOR/COP, N/SCI2, NOAA, 1305 East West Highway, Building IV Rm 8220, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Quay Dortch by phone 301–713–3338 x157.

SUPPLEMENTARY INFORMATION: OSTP is publishing this draft report as mandated by the Harmful Algal Blooms and Hypoxia Amendments Act 2004 (Pub. L. 108–456) to request public comments. The report is organized into five sections plus five appendices: (1) Executive Summary, (2) Legislative Background and Purpose of the Report, (3) Assessment of the Harmful Algal Bloom (HAB) Problem in U.S. Waters, (4) Prediction and Response Programs in the U.S. and (5) Opportunities for Advancement in Prediction and Response Efforts. Appendices include: Appendix I: Prediction and Response Programs in the U.S., Appendix II: Other National Programs, Appendix III: State, local, and tribal Prediction and Response Efforts, Appendix IV: International Programs related to HAB prediction and response, and Appendix V: **Federal Register** notice.

Report Summary

The *Harmful Algal Bloom and Hypoxia Amendments Act of 2004* (Pub. L. 108–456) (HABHRCA 2004) reauthorized the original *Harmful Algal Bloom and Hypoxia Research and Control Act* (Pub. L. 105–383) of 1998 and stipulated generation of five reports to assess and recommend research programs on harmful algal blooms (HABs) and hypoxia in U.S. waters. Section 103 of HABHRCA 2004 requires a *Prediction and Response Report.* This report will review and evaluate HAB prediction and response techniques and identify current prevention, control and mitigation (PCM) programs for freshwater, estuarine and marine HABs. Prediction and response are narrowly defined for the purpose of this report in order to avoid overlap with a subsequent report in this series, *Scientific Assessment of Marine Harmful Algal Blooms.*

The Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health (IWG–4H) of the Joint Subcommittee on Ocean Science and Technology (JSOST), which was tasked with implementing HABHRCA 2004, streamlined the reporting process by linking the P&R report (Section 103) with the *National Scientific Research, Development, Demonstration, and Technology Transfer Plan on Reducing Impacts from Harmful Algal Blooms* (Section 104 *RDDTT Plan*). The P&R report will (1) detail Federal, State, and tribal prediction and response related research and impact assessments, (2) identify opportunities for improvement of prediction and response efforts and associated infrastructure, and (3) propose a process to evaluate current prediction and response programs in order to develop a coordinated research priorities plan (RDDTT Plan). The final step (3) will lead to the development of the second report (RDDTT Plan) stipulated by the HABHRCA legislation (Section 104). The P&R report and the RDDTT Plan together comprise a comprehensive evaluation and multi-stakeholder plan to improve the national and local response to HABs in U.S. waters.

It is widely believed that the frequency and geographic distribution of HABs have been increasing worldwide. All U.S. coastal States have experienced HABs over the last decade. HAB frequency is also thought to be increasing in freshwater systems including ponds and lakes. In response, Federal, State, local, and tribal governments in collaboration with academic institutions have developed a variety of programs over the past 10 years both to understand HAB ecology and to minimize, prevent, or control HABs and HAB impacts in U.S. waters.

As a result of the efforts initiated in 1993, there are now 16 Federal extramural funding programs which either specifically or generally target HAB prediction and response and 20

intramural Federal research programs which are generating exciting new technologies for HAB monitoring and control. There are 2 major Federal multi-agency funding programs which represent important cross agency collaborative efforts. At least 25 States conduct HAB response efforts, operating through a wide range of State government departments and non profits. Tribes in some States are collaborating with academic, Federal, and State governments to monitor the presence of HABs. Given the global scope of HABs, U.S. programs also work closely with international programs and in some cases contribute funding.

The P&R report describes the remarkable progress made in some areas by Federal prediction and response programs. The greatest effort and progress has been made in mitigation, including improved monitoring and prediction capabilities, the establishment of event response programs, the conduct of economic impact assessments, and establishment of public health measures. Studies leading to prevention and control have led to new approaches. Infrastructure is being developed, cooperation and coordination has improved and incentive based programs have been used to address HAB problems.

Despite progress made, opportunities for advancing response to HABs still exist at the Federal and State level. The P&R report outlines opportunities for advancement identified by Federal agencies for HAB prediction and response and by the HAB community in the report, Harmful Algal Research and Response: A National Environmental Science Strategy (HARRNESS) 2005–2015. (Ramsdell, J.S., Anderson, D.M., and Glibert, P.M. (eds.) Ecological Society of America, Washington, DC, 96pp, 2005). This FRN requests public comment on the state of prediction and response programs in the U.S. and suggestions for how to improve that response.

Comments Request

The Office of Science and Technology Policy (OSTP) welcomes all comments on the content of the Draft report. OSTP is specifically interested in feedback on

(1) The current state of efforts (including infrastructure) in Prediction and Response to prevent, control, or mitigate Harmful Algal Blooms;

(2) suggestions for specific improvements in those efforts.

Please adhere to the instructions detailed below for preparing and submitting your comments on the Draft *National Assessment of Efforts to Predict and Respond to Harmful Algal Blooms in U.S. Waters*. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please format your comments into the following sections: (1) Background information for yourself including name, title, organizational affiliation and email or telephone (optional), (2) overview or general comments, (3) specific comments with reference to pages or line numbers where possible, and (4) specific comments about the current state of efforts in prevention, control and mitigation of HABs (PCM), including infrastructure. Please number and print identifying information at the top of all pages.

Public comments may be submitted from September 27, 2006 to November 20, 2006.

M. David Hodge,

Operations Manager.

[FR Doc. E6–15837 Filed 9–26–06; 8:45 am]

BILLING CODE 3170–W6–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commerical banks for trade with Sub-Saharan Africa.

Time and Place: October 11, 2006 at 10:30 a.m. to 12:30 p.m. The meting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting will include updates on Africa outreach with African Regional Financial Entities, Report on the ''Working with African Lenders'' seminar and the AGOA Forum, SAAC 2006 recommendations and International Business Development plans for Africa.

Public Participation: The meeting will be open to public participation and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to October 11, 2006. Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 707, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Kamil Cook,

Deputy General Counsel.

[FR Doc. 06–8289 Filed 9–26–06; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 19, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 27, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Nos.: FCC Forms 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,625 respondents; 16,787 responses.

Estimated Time Per Response: 15 hours average burden per response.

Frequency of Response: On occasion, one-time, quarterly and annual reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 253,170 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Federal Communications Commission (Commission) requires telecommunications carriers and other providers of telecommunications to contribute to the Universal Service Fund (USF) and other funds. Contribution revenue data, as well as other information, are reported by carriers on Forms 499–A and 499–Q. Accompanying these forms are instructions on how to report revenue. The proposed revisions to this collection will provide clarifications to the 2007 FCC Forms 499–A, 499–Q, and instructions in order to improve the revenue reporting process for respondents. For instance, the revisions would provide guidance in the instructions to entities regarding which entity is responsible for filing the FCC Forms 499–A or 499–Q after two entities have merged or one entity has purchased another. As another example of the type of changes sought in this proposed collection revision, the forms and instructions would provide additional instructions encouraging respondents to enter e-mail addresses on the forms. Other proposed changes to the forms and instructions would help respondents better determine how to report subject revenues and generally seek to provide respondents with an efficient, less burdensome information collection. The revisions proposed to the collection will have a minimal effect on the burden associated with filing FCC Forms 499–A and 499–Q for respondents. These proposed revisions would go into effect with the April 1, 2007 filing.

In addition, the 2006 FCC Forms and instructions which already reflect the changes to the contribution methodology adopted in the *2006 Interim Contribution Methodology Order* should remain in effect until the revised forms become effective for the April 1, 2007 filing and should continue to be available thereafter for filers to use in amending prior submissions. On July 27, 2006, the Commission received emergency approval of these information collection requirements from the Office of Management and Budget, which approval expires on January 31, 2007. The Commission has made minor editorial edits to the 2006 FCC Forms 499–A, 499–Q, and instructions. These changes included correction of typographical errors or omissions as well as other minor changes to ensure consistency between the forms and the instructions. The Commission asks that the information collection be approved by OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15718 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 19, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 27, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License.

Form Number: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,217.

Estimated Time per Response: 0.67 hours—11.25 hours.

Frequency of Response: Eight-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 5,271 hours.

Total Annual Cost: $1,567,401.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 303–S is used in applying for renewal of a license for a commercial or non-commercial AM, FM, or TV broadcast station and FM translator, TV translator, low power TV (LPTV), or low power FM broadcast station. It can also be used to seek the joint renewal of licenses for FM or TV translator station and its co-owed primary FM, TV, or LPTV station. The form also can be used to seek the joint renewal of licenses for FM or TV translator station and its co-owed primary FM, TV, or LPTV station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15720 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 21, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 27, 2006.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0561.

Title: Section76.913, Assumption of Jurisdiction by the Commission.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 10.

Estimated Time per Response: 8 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 80 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.913(b) requires a franchising authority unable to meet certification standards may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee when: (1) The franchising authority lacks the resources to administer rate regulation and (2) the franchising authority lacks the legal authority to regulate basic service rates; provided, however, that the authority must submit with its request a statement detailing the nature of the legal infirmity.

OMB Control Number: 3060–0607.

Title: Section76.922, Rates for Basic Service Tiers and Cable Programming Tiers.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 25.

Estimated Time per Response: 12 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 300 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.922(b)(5)(C) provides that an eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to local subscribers, the local franchising authority (''LFA''), and the Commission. The information is used by Commission staff to ensure that qualified small systems have additional incentives to add channels and that small systems are able to recover costs for headend upgrades when doing so.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15844 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2792]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 14, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by October 12, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Regulation of Prepaid Calling Card Services (WC Docket 05–68).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–8169 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2790]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 20, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by October 12, 2006. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the matter of amendment of section 73.202(b), Table of Allotments, FM broadcast stations (Rosebud and Madisonville, Texas), reclassification of license of FM station KNUE, Tyler, Texas (MB Docket No. 05–229).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15838 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2793]

Petitions for Reconsideration of Action in Rulemaking Proceeding

September 20, 2006.

Petitions for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to theses petition must be filed by October 12, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b) Table of Allotment of FM Broadcast Stations (Eldorado, Mason, Mertzon and Fort Stockton, Texas) (MB Docket No. 02–167).

In the Matter of Amendment of Section 73.202(b) Table of Allotments of FM Broadcast Stations (Culebra and Vieques Puerto Rico) (MB Docket No. 04–318).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15903 Filed 9–26–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on this agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011973.

Title: CSAV/NYK Venezuela Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK for the carriage of motor vehicles on car carriers from Newark, NJ to ports in Venezuela.

By Order of the Federal Maritime Commission.

Dated: September 22, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–15887 Filed 9–26–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 017992NF.

Name: A&C Import Export Services, Inc.

Address: 6317A 18th Avenue, Suite 302, Brooklyn, NY 11204.

Date Revoked: September 8, 2006.

Reason: Failed to mantain valid bonds.

License Number: 018894N.

Name: Alton Container, Inc.

Address: 12881 Knott Street, Suite 105, Garden Grove, CA 92841.

Date Revoked: August 15, 2006.

Reason: Surrendered license voluntarily.

License Number: 015577N.

Name: American Cargo Shipping Lines, Inc.

Address: 12335 Wake Union Church Rd., Suite 206, Wake Forest, NC 27587.

Date Revoked: August 14, 2006.

Reason: Failed to maintain a valid bond.

License Number: 017986N.

Name: American Freight Forwarders, Inc.

Address: 2633 East 28th Street, Suite 622, Signal Hill, CA 90755.

Date Revoked: September 8, 2006.

Reason: Failed to maintain a valid bond.

License Number: 017034NF.

Name: CF Airfreight Corporation.

Address: 750 South Plaza Drive, Suite 323, Mendota Height, MN 55120.

Date Revoked: July 20, 2006.

Reason: Failed to maintain valid bonds.

License Number: 018168NF.

Name: Casasco & Nardi, Inc.

Address: c/o Distribution-Publication, Inc., 7982 Capwell Drive, Oakland, CA 94621.

Date Revoked: July 28, 2006.

Reason: Surrendered license voluntarily.

License Number: 016355N.

Name: Consolidated Freightways Corporation of Delaware.

Address: 175 Linfield Drive, Menlo Park, CA 94025.

Date Revoked: September 2, 2006.

Reason: Failed to maintain a valid bond.

License Number: 015548N.

Name: Demars International, Inc. dba Service America Independent Line.

Address: Cargo Bldg. 67, Suite 3082, JFK Int'l Airport, Jamaica, NY 11430.

Date Revoked: September 14, 2006.

Reason: Failed to maintain a valid bond.

License Number: 002279N.

Name: Master Forwarding Network, Inc. dba Transoceanic Container Lines.

Address: 3250 Wilshire Blvd., Suite 1111, Los Angeles, CA 90010.

Date Revoked: September 14, 2006.

Reason: Failed to maintain a valid bond.

License Number: 018722N.

Name: Monarch Logistics LLC.

Address: 41 Los Altos Road, Orinda, CA 94563.

Date Revoked: August 25, 2006.

Reason: Failed to maintain a valid bond.

License Number: 014266N.

Name: Pacific Cargo, Inc.

Address: 2251 West Irving Park Rd., Chicago, IL 60618.

Date Revoked: August 25, 2006.

Reason: Failed to maintain a valid bond.

License Number: 012417N.

Name: Solex Express Inc.

Address: 1200 Brunswick Avenue, Far Rockaway, NY 11690.

Date Revoked: July 20, 2006.

Reason: Failed to maintain a valid bond.

License Number: 012629N.

Name: T & T Shipping Services, Inc.

Address: 2546 Pitkin Avenue, Brooklyn, NY 11208

Date Revoked: September 2, 2006.

Reason: Failed to maintain a valid bond.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–15881 Filed 9–26–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number : 018694NF.

Name: Global Parcel System LLC.

Address: 8304 Northwest 30th Terrace, Miami, FL 33122.

Order Published : FR: 06/28/06 (Volume 71, No.124, Pg. 36799).

License Number: 005820N.

Name: Ren International Services, Inc.

Address: 860 East Carson Street, #114, Carson, CA 90745.

Order Published: FR: 08/9/06 (Volume 71, No. 153, Pg. 45566).

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–15875 Filed 9–26–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Lennex Express, Inc., 1225 W. 190th Street, Suite 325, Gardena, CA 90248. *Officer:* Seri M. Ahn, President, (Qualifying Individual).

Daniel Cole Logistics LLC, 313 F Trindale Road, Suite 201, Archdale, NC 27263. *Officers:* Harold Wayne Gilmore, Member, (Qualifying Individual), Christopher Daniel Gilmore, Member.

MT Global Freight Solutions Inc., 701 Hanover Drive, Suite 450, Grapevine, TX 76051. *Officers:* Michael Keng Fai Tong, Secretary, (Qualifying Individual), Sandy Yeung, President.

Transtar International Freight PTY Ltd, Suite 1, 14 Woodruff Street, Port Melbourne Victoria 3207 Australia. *Officers:* Hank Meyer, Managing Director, (Qualifying Individual), Terry Smith, Director.

Capricorn Logistics Inc., 491 Supreme Drive, Bensenville, IL 60106. *Officers:* Timothy Wojno, Vice President, (Qualifying Individual), Sheetal Sandanand Shetty, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

SGL USA, Inc., 2153 NW., 79th Avenue, Miami, FL 33122. *Officer:* Jaime W. Pozo, President, (Qualifying Individual).

Pacific Container Line, Inc., 5710 Crescent Park East, #228, Playa Vista, CA 90094. *Officer:* Henry Chang, President, (Qualifying Individual).

Logistics International Forwarding Inc., 8305 NW 27th Street, Suite 111, Doral, FL 33122. *Officer:* Orestes Wrves, President, (Qualifying Individual).

International Cargo Express (USA) Inc., dba Ice Consolidation Services dba Ice Lines, Suite 225, Cargo Building 9, Jfkia, Jamaica, NY 11430. *Officers:* Robert C.K. Wong, Vice President, (Qualifying Individual), Harmon Lo Bing Chung, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Uniglobe Inc., 12911 Simms Ave., Hawthorne, CA 90250. *Officers:* Steven Bi, Vice President, (Qualifying Individual), Jane Shen, President.

Bluemove International Relocation, Inc., 3417 Tanterra Circle, Brookerville, MD 20833. *Officer:* Mark Spitzer, President, (Qualifying Individual).

Brower & Company, 6695 Butte Avenue, Sutter, CA 95982, Anthony W. Brower, Sole Proprietor.

Trade Docs International L.L.C., dba Sea King Forwarding, 96 Mountainview Avenue, Staten Island, NY 10314–4037. *Officer:* Kevin M. Carroll, President, (Qualifying Individual).

Dated: September 22, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–15878 Filed 9–26–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
011170F	Sage Freight Systems, Inc. dba Sage Container Lines, 182–30 150th Road, #108, Jamaica, NY 11413	April 6, 2006.
008404F	Ultimate Media Express Inc., 182–08 149th Avenue, Springfield Gardens, NY 11413	June 29, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–15885 Filed 9–26–06; 8:45 am]

BILLING CODE 6730–01–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 October 12, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Robert Milam, Jr. to individually retain control of 17.61 percent of the voting shares of Big Coal River Bancorp, Inc., Whitesville, West Virginia; Robert Milam, Jr., Robert Milam, Pamela Milam, Melissa Milam, Jada Milam, Kevin Milam, Lloyd Jarrell, and other members of the Milam family, as a group acting in concert, to retain control of 20.34 percent of the voting shares of Big Coal River Bancorp, Inc., Whitesville, West Virginia, and thereby indirectly acquire Whitesville State Bank, Whitesville, West Virginia.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Frederick D. Blume, Mayfield, Kentucky, to acquire additional voting shares of Jackson Financial Corporation, Mayfield, Kentucky, and thereby indirectly acquire FNB Bank, Inc., Mayfield, Kentucky.

Board of Governors of the Federal Reserve System, September 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–15791 Filed 9–26–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *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 October 23, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. New York Private Bank & Trust Corporation, and Emigrant Bancorp, Inc., all of New York, New York; to acquire all of the outstanding shares of EmigrantDirect Bank, Ossining, New York (in formation).

2. Glenville Bank Holding Company, Inc., Scotia, New York; to acquire 100 percent of the voting shares of First National Bank of Scotia, Scotia, New York, pursuant to section 3(a)(1) of the BHC Act and section 225.15 of Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–15790 Filed 9–26–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the tenth meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: October 12, 2006, from 11 a.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ce_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup members will be participating in a facilitated process intended to envision and describe a work in which personal health records have been widely adopted over a period of 10 years. This shared vision will be used to inform the future work of the Workgroup.

In addition, the Workgroup is soliciting written testimony on the following questions:

(1) What are the current business models for personal health records? How are personal health records being paid for and by whom?

(2) What are the market segments for the personal health records marketplace and what are the characteristics of the consumers and vendors for each segment?

The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8295 Filed 9–26–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Breast and Cervical Cancer Early Detection and Control Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through September 12, 2008.

For information, contact Debra Younginer, Executive Secretary, Breast and Cervical Cancer Early Detection and Control Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop K57, Atlanta, Georgia 30333, telephone 770/488–1074 or fax 770/488–3230.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 20, 2006.

Alvin Hall,

Director, Management Analysis and Services Office.

[FR Doc. E6–15846 Filed 9–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Times and Dates: 9 a.m.–4:45 p.m., October 17, 2006. 8:45 a.m.–12:15 p.m., October 18, 2006.

Place: Hilton Garden Inn Pittsburgh/Southpointe, 1000 Corporate Drive, Canonsburg, PA 15317, telephone (724) 743–5000, fax (724) 743–5010.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to be Discussed: The meeting will focus on current and planned NIOSH research related to mine disaster prevention and response and impact of the new Mine Improvement and New Emergency Response Act of 2006 (Miners Act) on the research plans. The agenda will also include an update on the Miners Choice Program and a report from the Associate Director for Mining.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Jeffery L. Kohler, PhD, Executive Secretary, MSHRAC, NIOSH, CDC,626 Cochrans Mill Road, telephone (412) 386–5301, fax (412) 386–5300.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 20, 2006.

Alvin Hall,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–15845 Filed 9–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of New York State Plan Amendment 05–50

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

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 6, 2006, at 26 Federal Plaza, New York, NY 10278, Room 38–110a, to reconsider CMS' decision to disapprove New York State plan amendment 05–50.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove New York State plan amendment (SPA) 05–50 which was submitted on September 29, 2005. This SPA was disapproved on June 23, 2006.

Under SPA 05–50, New York proposed to extend payment provisions for New York's Indigent Care Program for certain diagnostic and treatment centers. The amendment was disapproved because it did not comport with the requirements of section 1902(a)(4), 1902(a)(10), 1902(a)(30)(A), and 1905(a) of the Social Security Act (the Act).

At issue on reconsideration is: (1) Whether the proposed payments under SPA 05–50 would be for services furnished to individuals within the statutory categories of permissible eligible individuals set forth in sections 1902(a)(10) and 1905(a) of the Act; (2) whether the proposed payments under SPA 05–50 would result in claims for Federal financial participation that would not be within the scope of medical assistance which would be inconsistent with sections 1902(a)(4), 1902(a)(10), and 1905(a) of the Act; and (3) whether the State has demonstrated that the proposed payment rate, which would provide for payments unrelated to the covered Medicaid services furnished by the provider, is an efficient and economical method to pay for covered Medicaid services, consistent with the requirements of section

1902(a)(30)(A). The basis for these issues was set out in the disapproval determination and is summarized below.

Section 1902(a)(4) of the Act requires that State Medicaid plans provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient operation of the plan. Section 1902(a)(10) of the Act sets forth mandatory and optional groups of individuals for whom States may make medical assistance available under a State plan. Section 1902(a)(10) of the Act must be read in concert with the definition of medical assistance at section 1905(a), which includes additional specification of the categories of eligible individuals. SPA 05–50 would provide for payment for services furnished to individuals who are not within the listed groups or categories of individuals for whom medical assistance is authorized under the statute. Such payment is outside the scope of the definition of medical assistance. Including in the State plan a provision which would pay for provider costs that are not within the scope of medical assistance furnished to eligible individuals is not necessary for the proper and efficient operation of the plan. It will result in State claims for Federal financial participation in expenditures as medical assistance, which are not within the statutory definition of medical assistance.

The requirements of section 1902(a)(10) of the Act, read in concert with section 1905(a) of the Act, as noted above, define the range of individuals who must or may be eligible under a State plan, and the scope of medical assistance that may be made available. These sections do not provide for payment of provider costs of treating ineligible individuals, which is the apparent purpose of the Indigent Care Program.

Section 1902(a)(30)(A) of the Act requires that State plans provide payment methods for care and services available under the plan that are consistent with efficiency, economy, and quality of care. The proposed Medicaid payment method is determined by the individual diagnostic and treatment center's level of uncompensated care associated with uninsured patients and distributed without regard to the volume of Medicaid activity in the facility. The specific Medicaid reimbursement methodology applies a Medicaid rate to bad debt and charity care visits in the facility. This method results in an aggregate Medicaid payment which clearly is without regard to the provision of covered Medicaid services to eligible individuals, and cannot be considered an economical means of paying for such services.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Gregor N. Macmillan, *Director, Bureau of Medicaid Law, State of New York, Department of Health, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12237.*

Dear Mr. Macmillan: I am responding to your request for reconsideration of the decision to disapprove the New York State plan amendment (SPA) 05–50, which was submitted on September 29, 2005, and disapproved on June 23, 2006.

Under SPA 05–50, New York was proposing to extend payment provisions for New York's Indigent Care Program for certain diagnostic and treatment centers. The amendment was disapproved because it did not comport with the requirements of section 1902(a)(4), 1902(a)(10), 1902(a)(30)(A), and 1905(a) of the Social Security Act (the Act).

At issue on reconsideration is: (1) Whether the proposed payments under SPA 05–050 would be for services furnished to individuals within the statutory categories of permissible eligible individuals set forth in sections 1902(a)(10) and 1905(a) of the Act; (2) whether the proposed payments under SPA 05–50 would result in claims for Federal financial participation that would not be within the scope of medical assistance which would be inconsistent with sections 1902(a)(4), 1902(a)(10), and 1905(a) of the Act; and (3) whether the State has demonstrated that the proposed payment rate, which would provide for payments unrelated to the covered Medicaid services furnished by the provider, is an efficient and economical method to pay for covered Medicaid services, consistent with the requirements of section 1902(a)(30)(A). The basis for these issues was set out in the disapproval determination and is summarized below.

Section 1902(a)(4) of the Act requires that State Medicaid plans provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient operation of the plan. Section 1902(a)(10) of the Act sets forth mandatory and optional groups of individuals for whom States may make medical assistance available under a State plan. Section 1902(a)(10) of the Act must be read in concert with the definition of medical assistance at section 1905(a), which includes additional specification of the categories of eligible individuals. SPA 05–50 would provide for payment for services furnished to individuals who are not within the listed groups or categories of individuals for whom medical assistance is authorized under the statute. Such payment is outside the scope of the definition of medical assistance. Including in the State plan a provision which would pay for provider costs that are not within the scope of medical assistance furnished to eligible individuals is not necessary for the proper and efficient operation of the plan. It will result in State claims for Federal financial participation in expenditures as medical assistance, which are not within the statutory definition of medical assistance.

The requirements of section 1902(a)(10) of the Act, read in concert with section 1905(a) of the Act, as noted above, define the range of individuals who must or may be eligible under a State plan, and the scope of medical assistance that may be made available. These sections do not provide for payment of provider costs of treating ineligible individuals, which is the apparent purpose of the Indigent Care Program.

Section 1902(a)(30)(A) of the Act requires that State plans provide payment methods for care and services available under the plan that are consistent with efficiency, economy, and quality of care. The proposed Medicaid payment method is determined by the individual diagnostic and treatment center's level of uncompensated care associated with uninsured patients and distributed without regard to the volume of Medicaid activity in the facility. The specific Medicaid reimbursement methodology applies a Medicaid rate to bad debt and charity care visits in the facility. This method results in an aggregate Medicaid payment which clearly is without regard to the provision of covered Medicaid services to eligible individuals, and cannot be considered an economical means of paying for such services. For the reasons cited above, and after consultation with the Secretary, as required by Federal regulations at 42 CFR 430.15(c)(2), New York 05–50 was disapproved on June 23, 2006.

I am scheduling a hearing on your request for reconsideration to be held on December 6, 2006, at 26 Federal Plaza, New York, NY 10278, Room 38–110a, to reconsider the decision to disapprove SPA 05–50. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to

the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Mark B. McClellan, M.D., PhD.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: September 18, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6–15779 Filed 9–26–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendment 05–11

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on November 15, 2006, at the Richard Bolling Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2898, the Kansas City Room, to reconsider CMS' decision to disapprove Missouri State plan amendment 05–11.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Missouri State plan amendment (SPA) 05–11 which was submitted on September 27, 2005. This SPA was disapproved on June 16, 2006. Under SPA 05–11, Missouri proposed to alter the provider qualifications and payment methodology for personal care assistance services by transferring administrative responsibility for such providers from one State agency to another.

At issue is: (1) Whether SPA 05–11 complied with the requirements of section 1902(a) of the Social Security Act (the Act) generally, and 1902(a)(30) of the Act specifically, in providing for coverage of services for which the State plan did not contain a clear payment methodology that the State had shown was consistent with efficiency and economy; (2) whether the proposed coverage of personal care services in SPA 05–11 was consistent with the definition of personal care services in section 1905(a)(24) of the Act (which is integral to the definition of ''medical assistance'' in sections 1905(a) and 1902(a)(10)(A) of the Act), and applicable regulations, including services of registered nurses.

This amendment was disapproved because the resulting plan would not have comported with the requirements of section 1902(a)(30)(A) and section 1905(a)(24) of the Act and implementing regulations.

Section 1902(a)(30)(A) of the Act requires that State plans have methods and procedures to assure that payments are consistent with economy, efficiency, and quality of care. While this SPA would have provided for coverage of personal care services, the methodology for paying for such services was not clearly set forth in the State plan. Moreover, Missouri provided information that personal care services, and personal care assistance services, are reimbursed based on a 15-minute service unit. However, the State did not provide to CMS the rate for the 15-minute service unit, or any rate derivation information, to conclude that this payment is economic or efficient. In light of this, CMS cannot conclude that the coverage of the proposed services would have been accomplished through an efficient and economical payment methodology in compliance with the requirements of section 1902(a)(30)(A).

Further, the overall requirement in section 1902(a) for a State plan, and the specific requirement at section 1902(a)(30)(A) for methods and procedures related to payment, as implemented by Federal regulations at 42 CFR 430.10 and 42 CFR 447.252(b) require that the State plan include a comprehensive description of the methods and standards used to set payment rates. Payment methodologies should be understandable and auditable. In addition, since the plan is the basis for Federal financial participation, it is important that the plan language be clear and unambiguous. The proposed methodology does not provide sufficient information for providers to determine the payment amount to which they are entitled.

Additionally, the Medicaid personal care services benefit does not include registered nurse services in the definitions at section 1905(a)(24) of the Act and Federal regulations at 42 CFR 440.167 and thus such coverage is not within the scope of ''medical assistance'' under sections 1905(a) and 1902(a)(10) of the Act. As CMS had indicated in the State Medicaid Manual Part 4, section 4480(C), although personal care services may be similar to, or overlap, some services furnished by home health aides, ''skilled services that may be performed only by a health professional are not considered personal care services.'' It would not be consistent with efficiency and economy for a State to pay higher rates to attract overqualified individuals (registered nurses) to provide personal care services. Registered nurse services may instead be furnished as a home health service under 42 CFR 440.70(b)(1), or as private duty nursing services as defined at 42 CFR 440.80(a). Furthermore, there is no provision in Medicaid for payment for training of personal care providers, including the ''training and supervision'' of the ''qualified staff licensed by the Department of Mental Health'' or supervision visits by a registered nurse.

For these reasons, and after consulting with the Secretary as required by Federal regulations at 42 CFR section 430.15(c)(2), I disapproved this SPA on June 16, 2006.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR

430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Steven E. Renne, Interim Director, Missouri, Department of Social Services, P.O. Box 1527, Broadway State Office Building, Jefferson City, MO 65102–1527.

Dear Mr. Renne: I am responding to your request for reconsideration of the decision to disapprove the Missouri State plan amendment (SPA) 05–11, which was submitted on September 27, 2005, and disapproved on June 16, 2006.

Under SPA 05–11, Missouri was proposing to alter the provider qualifications and payment methodology for personal care assistance services by transferring administrative responsibility for such providers from one State agency to another.

At issue in this reconsideration is: (1) whether SPA 05–11 complied with the requirements of section 1902(a) of the Social Security Act (the Act) generally, and 1902(a)(30) of the Act specifically, in providing for coverage of services for which the State plan did not contain a clear payment methodology that the State had shown was consistent with efficiency and economy; (2) whether the proposed coverage of personal care services in SPA 05–11 was consistent with the definition of personal care services in section 1905(a)(24) of the Act (which is integral to the definition of ''medical assistance'' at sections 1905(a) and 1902(a)(10) of the Act), and applicable regulations, including services of registered nurses.

This amendment was disapproved because it did not comport with the requirements of section 1902(a) generally, section 1902(a)(30)(A) specifically, and section 1905(a)(24) of the Act and implementing regulations.

Section 1902(a)(30)(A) of the Act requires that State plans have methods and procedures to assure that payments are consistent with economy, efficiency, and quality of care. While this SPA would have provided for coverage of personal care services, the methodology for paying for such services was not clearly set forth in the State plan. Moreover, Missouri provided information that personal care services and personal care assistance services are reimbursed based on a 15-minute service unit. However, the State did not provide to the Centers for Medicare & Medicaid Services (CMS) the rate for the 15-minute service unit or any rate derivation information to conclude that this payment is economic or efficient. In light of this, CMS cannot conclude that coverage of the proposed services would be accomplished through an efficient and economical payment methodology in compliance with the requirements of section 1902(a)(30)(A).

Further, the overall requirement in section 1902(a) for a State plan, and the specific requirement at section 1902(a)(30)(A) for methods and procedures related to payment, as implemented by Federal regulations at 42 CFR §§ 430.10 and 447.252(b) require that the State plan include a comprehensive description of the methods and standards used to set payment rates. Payment methodologies should be understandable and auditable. In addition, since the plan is the basis for Federal financial participation, it is important that the plan language be clear and unambiguous. The proposed methodology does not provide sufficient information for providers to determine the payment amount to which they are entitled.

Additionally, the Medicaid personal care services benefit does not include registered nurse services in the definitions at section 1905(a)(24) of the Act and Federal regulations at 42 CFR 440.167, and thus such coverage is not within the scope of ''medical assistance'' defined under section 1905(a) and 1902(a)(10) of the Act. As CMS had indicated in the State Medicaid Manual Part 4, section 4480(C), although personal care services may be similar to, or overlap, some services furnished by home health aides, ''skilled services that may be performed only by a health professional are not considered personal care services.'' It would not be consistent with efficiency and economy for a State to pay higher rates to attract overqualified individuals (registered nurses) to provide personal care services. Registered nurse services may instead be furnished as a home health service under 42 CFR 440.70(b)(1), or as private duty nursing services as defined at 42 CFR 440.80(a). Furthermore, there is no provision in Medicaid for payment for training of personal care providers, including the ''training and supervision'' of the ''qualified staff licensed by the Department of Mental Health'' or supervision visits by a registered nurse.

For these reasons, and after consulting with the Secretary as required by Federal regulations at 42 CFR section 430.15(c)(2), I disapproved this SPA on June 16, 2006.

I am scheduling a hearing on your request for reconsideration to be held on November 15, 2006, at the Richard Bolling Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2898, the Kansas City Room, to reconsider the decision to disapprove SPA 05–11. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Mark B. McClellan, M.D., PhD

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program)

Dated: September 20, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6–15780 Filed 9–26–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Title IV–E Foster Care Eligibility Reviews; Child and Family Services Reviews; Anti-Discrimination Enforcement.

OMB No.: 0970–0214.

Description: The following five separate activities are associated with this information collection:

- Foster Care Eligibility Review (FCER) Program Improvement Plan;
- Child and Family Services Reviews (CFSR) State agency Statewide Assessment;
- CFSR On-site review;
- CFSR Program Improvement Plan; and
- Anti-Discrimination Enforcement Corrective Action Plan.

The collection of information for review of Federal payments to States for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the social Security Act (the Act), section 474 [42 U.S.C. 674]. The Foster Care Eligibility Reviews (FCER) ensure that States claim title IV–E funds on behalf of title IV–E eligible children.

The collection of informaiton for review of State child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act is authorized by section 1123(a) [42 U.S.C 1320a–1a] of the Act. The CFSR looks at both the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes.

Section 474(d) of the Act [42 U.S.C 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 4371(a)(18) [42 U.S.C 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18).

The information collection is needed: (1) To ensure compliance with title IV–E foster care eligibility requirements; (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow ACF to determine if States are in compliance with State plan requirements and are achieving desired outcomes for children and families, help ensure that claims by States for title IV–E funds are made on behalf of title IV–E eligible children, and require States to revise applicable statutes, rules, policies and procedures, and provide proper training to staff, through the development and implementation of corrective action plans. These reviews not only address compliance with eligibility requirements but also assist States in enhancing the capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and States' experiences in conducting reviews and developing program improvement plans.

Respondents: State Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 1356.7 (i) Program Improvement Plan (FCER)	7	1	90	630
45 CFR 1366.33 (b) Statewide Assessment (CFSR)	13	1	240	3,120
45 CFR 1355.33 (c) On-site Review (CFSR)	13	1	1,170	15,210
45 CFR 1355.35 (a) Program Improvement Plan (CFSR)	13	1	240	3,120
45 CFR 1355.38 (b) and (c) Corrective Action Plan (Anti-discrimination enforcement)	1	1	780	780

Estimated Total Annual Burden Hours: 22,860.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Office for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 20, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–8272 Filed 9–26–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0006]

Determination of Regulatory Review Period for Purposes of Patent Extension; LYRICA (New Drug Application 21–446)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LYRICA (new drug application (NDA) 21–446) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LYRICA (NDA 21–446) (pregabalin). LYRICA (NDA 21–446) is indicated for management of neuropathic pain associated with

diabetic peripheral neuropathy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LYRICA (NDA 21–446) (U.S. Patent No. 6,197,819) from Warner-Lambert Company LLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LYRICA (NDA 21–446) represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LYRICA (NDA 21–446) is 3,279 days. Of this time, 2,852 days occurred during the testing phase of the regulatory review period, while 427 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 10, 1996. The applicant claims August 24, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 10, 1996, which was 30 days after FDA receipt of the initial IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 31, 2003. The applicant claims October 30, 2003, as the date the new drug application (NDA) for LYRICA (NDA 21–446) was initially submitted. However, FDA records indicate that NDA 21–446 was initially submitted on October 31, 2003.

3. *The date the application was approved*: December 30, 2004. FDA has verified the applicant's claim that NDA 21–446 was approved on December 30, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 299 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 27, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 26, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 15, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15908 Filed 9–26–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2006–0054]

Notice of Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate for Preparedness, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet in open session.

DATES: Tuesday, October 10, 2006, from 1:30 p.m. to 4:30 p.m.

ADDRESSES: National Press Club, 529 14th Street, NW., Washington, DC 20045. You may submit comments, identified by DHS–2006–0054, by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *william.corcoran@associates.dhs.gov*. When submitting comments electronically, please include by DHS–2006–0054, in the subject line of the message.
- Mail: Jenny Menna, Department of Homeland Security, Directorate for Preparedness, Washington, DC 20528. To ensure proper handling, please reference by DHS–2006–0054, on your correspondence. This mailing address may be used for paper, disk or CD–ROM submissions.
- Hand Delivery/Courier: Jenny Menna, Department of Homeland Security, Directorate for Preparedness, Washington, DC 20528. Contact Telephone Number 703–235–5316.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2006–0054, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jenny Menna, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–5316.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.1 *et seq.*). At this meeting, the NIAC will be briefed on the status of several Working Group activities in which the Council is currently engaged.

This meeting is open to the public on a first-come, first-served basis. Please note that the meeting may close early if all business is finished.

A tentative agenda for the meeting is set forth below, but may be updated. Please consult the NIAC Web site, *http://www.dhs.gov/niac*, for the most current agenda.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Officer as soon as possible.

Dated: September 18, 2006.

Jenny Menna,

Designated Federal Officer for the NIAC.

Draft Agenda of October 10, 2006 Meeting

I. Opening of Meeting: *Jenny Menna,* Designated Federal Officer, NIAC, Department of Homeland Security.

II. Roll Call of Members: *Jenny Menna.*

III. Opening Remarks and Introductions: NIAC Chairman, *Erle A. Nye,* Chairman Emeritus, TXU Corp, NIAC Vice Chairman, *John T. Chambers,* President and CEO, Cisco Systems, Inc, *Michael*

Chertoff, Secretary, Department of Homeland Security (DHS) *(Invited), Frances Fragos Townsend,* Assistant to the President for Homeland Security and Counterterrorism *(Invited).*

IV. Approval of July Minutes: NIAC Chairman, *Erle A. Nye.*

V. Final Reports and Deliberations: NIAC Chairman, *Erle A. Nye* Presiding.

A. The Prioritization of Critical Infrastructures for a Pandemic Outbreak in the United States: *Chief Rebecca F. Denlinger*, Fire Chief, Cobb County, Georgia Fire and Emergency Services, NIAC Member, *Martha H. Marsh,* Chairman and CEO, Stanford Hospital and Clinics, NIAC Member and *Bruce Rohde,* Chairman and CEO Emeritus, ConAgra Foods, Inc.

B. Deliberation and Approval of Recommendations of Final Report: *NIAC Members.*

VI. Status Report on Current Working Group Initiatives: NIAC Chairman, *Erle A. Nye* Presiding.

A. Convergence of Physical and Cyber Technologies and Related Security Management Challenges: *George Conrades,* Executive Chairman, Akamai Technologies, NIAC Member, *Margaret Grayson,* President, AEP Government Solutions Group, NIAC Member, and *Gregory A. Peters,* Former President and CEO, Internap Network Services Corporation, NIAC Member.

VII. New Business: NIAC Chairman, *Erle A. Nye,* NIAC Members TBD.

A. Discussion of Potential New Working Group Topics: *NIAC Members.*

B. Recommendations Follow-up: *Nancy Wong,* Designated Federal Officer, DHS.

VIII. Adjournment: NIAC Chairman, *Erle A. Nye.*

[FR Doc. E6–15864 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; Form I–914 and Supplements A and B; OMB Control No. 1615–0099.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 27, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0099 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914 and Supplements A and B. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This application permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914 (500 responses at 2.25 hours per response); Supplement A (500 responses at 1 hour per response); Supplement B (200 responses at .5 hours per response);

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: September 22, 2006.

Stephen Tarragon,

Acting Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–15785 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0014; Special Use Permit Applications for National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is

summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on September 30, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 27, 2006.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0014.

Title: Special Use Permit Application for National Wildlife Refuges in Alaska (50 CFR 25.61, 26.22(b), 26.25, 36.33, 36.37, 36.39, and 36.41).

Service Form Number(s): 3–2001.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals; businesses and other for-profit institutions; not-for-profit institutions; State, local, or tribal governments; and the Federal Government.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Type of permit application	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Noncompetitive—Kodiak	240	240	20 minutes	80
Noncompetitive—Other	120	170	90 minutes	255
Competitive	80	180	30 hours	5,400
Totals	440	590		5,735

Abstract: We collect information from individuals or organizations that apply for a special use permit required to conduct economic or other privileged or specialized uses on National Wildlife Refuge System lands in Alaska. We use the information to:

(1) Determine if the applicant is qualified or eligible for a permit.

(2) Evaluate the impacts of the proposed activity on refuge resources and other users.

(3) Determine if the proposed activity is compatible with refuge purposes and the mission of the refuge system.

Comments: On May 26, 2006, we published in the **Federal Register** (71 FR 30439) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on July 25, 2006. We received two comments from the same individual. The comments did not address issues surrounding the proposed collection of information or the cost and hour burden estimates, but instead objected to our issuing permits for guided hunting. The commenter also questioned who verified the information submitted in the application, and suggested requesting additional information for two of the application items. If we include the suggested additional information on our application, we would collect information in excess of the minimum necessary to fulfill our statutory and regulatory requirements and responsibilities. Therefore, we have not made any changes to FWS Form 3–2001 as a result of these comments.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice are a matter of public record.

Dated: August 10, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–15788 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Cedar Island National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Cedar Island National Wildlife Refuge on Cedar Island National Wildlife Refuge in Carteret County, North Carolina.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Cedar Island National Wildlife Refuge are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and in accordance with the National Environmental Policy Act of 1969. The compatibility determinations for hunting, fishing, wildlife observation, wildlife photography, environmental education and interpretation, trapping of selected furbearers, forest management, and resource research studies are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to: Mattamuskeet National Wildlife Refuge, 38 Mattamuskeet Road, Swan Quarter, North Carolina 27885. The plan may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 30-day public review and comment period was announced in the **Federal Register** on February 14, 2006 (71 FR 7794). The draft plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Based on the environmental

assessment and the comments received, the Service adopted alternative 2 as its preferred alternative. Alternative 2 emphasizes management of the refuge's priority wildlife species. The staff will survey waterfowl from the air on a routine basis. The refuge will continue to allow the six priority public use activities, but will have the capacity to increase the number of opportunities. The staff will conduct environmental education programs and establish an interpretive and observation trail with a brochure and a photo blind. The staff will control dominant pest plants and animals. There will be four staff members stationed at Cedar Island National Wildlife Refuge.

Cedar Island National Wildlife Refuge covers a total of 14,480 acres within a 16,887-acre acquisition boundary on Cedar Island in Pamlico Sound. The refuge is comprised of 11,000 acres of brackish marsh, 1,500 acres of longleaf pine savanna, 150 acres of brackish shrub, 125 acres of pond pine woodland, 100 acres of bay forest, 100 acres of low pocosin, and 50 acres of cypress-gum swamp. These habitats support a variety of wildlife species, including waterfowl, shorebirds, wading birds, marsh birds, and neotropical migratory songbirds.

Authority: This action is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: June 21, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–8279 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by October 27, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Charles F. Bridge, Manzanita, OR, PRT–129006.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charlotte M. Peyerk, Shelby Township, MI, PRT–129016.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Danial A. Peyerk, Shelby Township, MI, PRT–129017.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: National Museum of Natural History, Smithsonian Institution, Washington, DC, 20013–7012, PRT–125284.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Robert L. Hudson, Oxford, MS, PRT–129586.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Rodney W. Brandenburg, Longmont, CO, PRT–128485.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: James R. Martell, Glenns Ferry, ID, PRT–130729.

The applicant requests a permit to import a polar bear (*Ursus spp.*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: September 8, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–15768 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 27, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Zoological Society of Philadelphia, PA, PRT–126270.

The applicant requests a permit to import 15 captive-born tamarins (*Saguinus bicolor*) for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Philadelphia, PA, PRT–126543.

The applicant requests a permit to import serum from one wild origin captive-held female jaguar (*Panthera onca*) from La Aurora Zoo, Guatemala, for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Philadelphia, PA, PRT–126542.

The applicant requests a permit to import one wild origin captive-held female jaguar (*Panthera onca*) from La Aurora Zoo, Guatemala, for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Philadelphia, PA, PRT–126541.

The applicant requests a permit to import one wild origin captive-held male jaguar (*Panthera onca*) from Belize Zoo, Belize, for the purpose of enhancement of the survival of the species.

Applicant: Nathaniel J. Dominy, University of California, Santa Cruz, CA, PRT–130146.

The applicant requests a permit to import biological samples from wild spider monkeys (*Ateles geoffroyi frontatus* and *Ateles geoffroyi panamensis*, and howler monkeys (*Alouatta palliata*) collected in Costa Rica, for the purpose of scientific research.

Dated: September 15, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–15769 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of 37 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces 5-year reviews of the Anastasia Island beach mouse (*Peromyscus polionotus phasma*), Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*), Everglade snail kite (*Rostrhamus sociabilis plumbeus*), wood stork (*Mycteria americana*), Culebra giant anole (*Anolis roosevelti*), bluetail mole skink (*Eumeces egregius lividus*), sand skink (*Neoseps reynoldsi*), golden coqui (*Eleutherodactylus jasperi*), purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), fat three-ridge (*Amblema neislerii*), Crenulate lead-plant (*Amorpha crenulata*), *Catesbaea melanocarpa* (no common name), Garber's spurge (*Chamaesyce garberi*), Etonia rosemary (*Conradina etonia*), *Cordia bellonis* (no common name), Avon Park harebells (*Crotalaria avonensis*), beautiful goetzea (*Goetzea elegans*), *Lepanthes eltoroensis* (no common name), *Mitracarpus maxwelliae* (no common name), *Mitracarpus polycladus* (no common name), *Peperomia wheeleri* (no common name), wide-leaf warea (*Warea amplexifolia*), elfin tree fern (*Cyathea dryopteroides*), *Elaphoglossum serpens* (no common name), *Polystichum calderonense* (no common name), *Tectaria estremerana* (no common name), *Thelypteris inabonensis* (no common name), *Thelypteris verecunda* (no common name) and *Thelypteris yaucoensis* (no common name), and Florida perforate cladonia (*Cladonia perforata*) under section 4(c)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before November 27, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information submitted on the Anastasia Island beach mouse, wood stork, Etonia rosemary, and wide-leaf warea should be sent to Sandy MacPherson, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216, fax 904–232–2404. Information on the Lower Keys marsh rabbit, Everglades snail kite, bluetail mole skink, sand skink, Crenulate lead-plant, Garber's spurge, Avon Park harebells, and Florida perforate cladonia should be sent to Cindy Schulz, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960, fax 772–562–4288. Information on the Choctawhatchee beach mouse, Perdido Key beach mouse, purple bankclimber, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, shinyrayed pocketbook, Chipola slabshell, and fat three-ridge should be sent to Gail Carmody, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405, fax 850–763–2177. Information submitted on the Culebra giant anole, golden coqui, *Catesbaea melanocarpa*, *Cordia bellonis*, beautiful goetzea, *Lepanthes eltoroensis*, *Mitracarpus maxwelliae*, *Mitracarpus polycladus*, *Peperomia wheeleri*, elfin tree fern, *Elaphoglossum serpens*, *Polystichum calderonense*, *Tectaria estremerana*, *Thelypteris inabonensis*, *Thelypteris verecunda* and *Thelypteris yaucoensis* should be sent to Edwin Muniz, Field

Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, fax 787–851–7440. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Sandy MacPherson at the Jacksonville, Florida, address above for the Anastasia Island beach mouse, wood stork, Etonia rosemary, and wide-leaf warea (telephone, 904/232–2580, ext. 110, e-mail *sandy_macpherson@fws.gov*); Cindy Schulz at the Vero Beach, Florida, address above for Lower Keys marsh rabbit, Everglade snail kite, bluetail mole skink, sand skink, Crenulate lead-plant, Garber's spurge, Avon Park harebells, and Florida perforate cladonia (telephone, 772/562–3909, ext. 305, e-mail *cindy_schulz@fws.gov*); Gail Carmody at the Panama City, Florida, address above for the Choctawhatchee beach mouse, Perdido Key beach mouse, purple bankclimber, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, shinyrayed pocketbook, Chipola slabshell, and fat three-ridge (telephone, 850/769–0552, ext. 225, e-mail *gail_carmody@fws.gov*); and Edwin Muniz, at the above Boquerón, Puerto Rico, address for the Culebra giant anole, golden coqui, *Catesbaea melanocarpa*, *Cordia bellonis*, beautiful goetzea, *Lepanthes eltoroensis*, *Mitracarpus maxwelliae*, *Mitracarpus polycladus*, *Peperomia wheeleri*, elfin tree fern, *Elaphoglossum serpens*, *Polystichum calderonense*, *Tectaria estremerana*, *Thelypteris inabonensis*, *Thelypteris verecunda* and *Thelypteris yaucoensis* (telephone, 787/851–7297, ext. 228, e-mail *edwin_muniz@fws.gov*).

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process.

The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as endangered: Anastasia Island beach mouse, Choctawhatchee beach mouse, Perdido Key beach mouse, Lower Keys marsh rabbit, Everglade snail kite, wood stork, Culebra giant anole, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, shinyrayed pocketbook, fat three-ridge, Crenulate lead-plant, *Catesbaea melanocarpa*, Etonia rosemary, *Cordia bellonis*, Avon Park harebells, beautiful goetzea, *Lepanthes eltoroensis*, *Mitracarpus maxwelliae*, *Mitracarpus polycladus*, *Peperomia wheeleri*, wide-leaf warea, elfin tree fern, *Elaphoglossum serpens*, *Polystichum calderonense*, *Tectaria estremerana*, *Thelypteris inabonensis*, *Thelypteris verecunda*, *Thelypteris yaucoensis*, and Florida perforate cladonia. This notice also announces our active review of the following species that are currently federally listed as threatened: bluetail mole skink, sand skink, golden coqui, purple bankclimber, Chipola slabshell, and Garber's spurge.

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.* Amendments to the List through final rules are published in the **Federal Register**

What information is considered in the review?

A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What could happen as a result of this review?

If we find that there is new information concerning any of these 37 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Public Solicitation of New Information

We request any new information concerning the status of any of these 37 species. See ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the

data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review during normal business hours. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 et seq.).

Dated: September 14, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–15824 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Sentry Milk-Vetch Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final recovery plan for the sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*). Three populations of this endangered plant are known to occur on land managed by the National Park Service in the Grand Canyon National Park (Park) in Coconino County, Arizona.

ADDRESSES: Persons may obtain a copy of the recovery plan by accessing the Service's Arizona Ecological Services Field Office Internet Web page at *http://arizonaes.fws.gov* or by contacting the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210) to obtain a copy via the mail or in person at the addresses above.

FOR FURTHER INFORMATION CONTACT: Mima Falk, Arizona Ecological Services Tucson Suboffice, 201 N Bonita Ave., Tucson, Arizona 85745 (520/670–6150 ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans.

The recovery plan describes the status, current management, recovery criteria, and specific actions needed to reclassify the sentry milk-vetch from endangered to threatened and for eventual consideration for delisting. An original draft of the recovery plan was developed by Dr. Joyce Maschinski, a botanist and species specialist from the Arboretum at Flagstaff. The document was reviewed and updated by a team of botanists, soil scientists, naturalists and National Park Service land managers that have a history of researching or managing the plant and its habitat. In 1993, the draft recovery plan for the sentry milk-vetch underwent technical and public review, but was not finalized at that time due to other high priority work. The reviews received on the 1993 draft are maintained in the Service's administrative record. The draft plan was subsequently updated again and made available for public and peer review in 2004 (69 FR 55447), with a re-opening of the public comment period for an additional 30 days in 2005 (70 FR 1736).

Sentry milk-vetch is known from three locations on the South Rim of the Grand Canyon, where Kaibab limestone forms large flat platforms with shallow soils near pinyon-juniper woodlands. There are currently fewer than 600 individual sentry milk-vetch plants between the three locations. The primary cause of decline of the largest population at Maricopa Point prior to protection was trampling by Park visitors, although drought conditions may have worsened the situation. We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by sentry milk-vetch as part of our 1990 final determination to list this species as endangered (55 FR 50184). The four major threats identified in the rule listing the species were: (1) Destruction of habitat and damage to individuals through human disturbance (trampling); (2) over-utilization due to collection; (3) inadequacy of existing regulatory mechanisms to provide protection of habitat; and (4) naturally low reproduction of the species. The recovery plan reassesses current threats to the species and provides recovery actions to lessen and alleviate significant threats.

The recovery plan recommends downlisting to threatened when four viable populations of 1,000 plants each have been established and maintained for 10–30 years, and delisting when eight populations have been established and maintained for 10–30 years. These criteria are based on considerations of population viability and resiliency, redundancy, climatic factors, and habitat protection. The time to reach downlisted or recovered status is not known, but will depend on the time necessary to survey existing habitat, accomplish priority research needs, establish a botanical garden population, establish new wild populations, and implement management to protect the species. Estimated costs for the first 5 years of recovery implementation total $963,000.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 6, 2006.

Christopher T. Jones,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. E6–15873 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
124503	Randall M. Peters	71 FR 35692; June 21, 2006	August 25, 2006.
126959	Frank S. Noska, IV	71 FR 37602; June 30, 2006	August 25, 2006.
127173	James R. Hens	71 FR 37602; June 30, 2006	August 25, 2006.

Dated: September 8, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–15771 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application is available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
125905	Marty R. Barber	71 FR 37602; June 30, 2006	September 8, 2006.

Dated: September 15, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–15772 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; DK–G–06–0005, IDI–7322]

Public Land Order No. 7671; Extension of Public Land Orders No. 6629 and No. 6670; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Orders No. 6629 and No. 6670 for additional 20-year terms. Extension of these orders is necessary to continue the protection of the Lower Salmon River in Idaho, Lewis, and Nez Perce Counties.

Effective Date: September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnel Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: Copies of the original withdrawal orders containing a legal description of the lands involved are available from the Bureau of Land Management, Idaho State Office at the address above.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6629 (51 FR 41104, November 13, 1986) and Public Land Order No. 6670 (53 FR 10535, April 1, 1988), which withdrew a total of 26,593.81 acres of public lands and minerals from settlement, sale, location, and entry under the general land laws, including the United States mining laws, but not the mineral leasing laws, to protect the Lower Salmon River, are hereby each extended for additional 20-year terms.

2. Public Land Order No. 6629 will expire on November 12, 2026 and Public Land Order No. 6670 will expire on March 31, 2028, unless, as a result of a review conducted prior to the expiration dates pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawals shall be extended.

(Authority: 43 CFR 2310.4)

Dated: September 8, 2006.

R. Thomas Weimer,

Assistant Secretary of the Interior.

[FR Doc. E6–15827 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–330–06–2641–HO–AZZF]

Topock Project Area Emergency Road Closure

AGENCY: Bureau of Land Management, Lake Havasu Field Office, Arizona, Interior.

SUMMARY: Pursuant to Title 43 Code of Federal Regulations, subpart 8364.1, the Bureau of Land Management, Lake Havasu Field Office, will close portions of roads on public lands to motorized and mechanized vehicle use. The purpose of the emergency closure is to protect soils, vegetation and cultural resources that have been adversely impacted, or are at risk of being adversely impacted, by off-highway vehicle (OHV) use. In addition, this closure is needed to alleviate congestion in the project area during Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remediation of hexavalent chromium in the groundwater at the Pacific Gas and Electric (PG&E) Topock Compressor Station in Needles, California. Copies of this Emergency Closure Notice and map are available at the BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406, phone (928) 505–1200.

EFFECTIVE DATE: This emergency road closure is in effect beginning August 1, 2006, and will remain in effect until considerable adverse effects giving rise to the closure are eliminated, and measures are implemented to prevent recurrence of these adverse effects.

FOR FURTHER INFORMATION CONTACT: Michael Dodson, Law Enforcement Ranger, Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406, phone (928) 505–1200.

SUPPLEMENTARY INFORMATION: The BLM Lake Havasu Field Office and other entities have observed and documented considerable adverse effects to soils, vegetation, and cultural resources from motorized or mechanized vehicle use in this area. Based on this information, the BLM authorized officer has determined that motorized or mechanized vehicle use in this area is causing, and will continue to cause, considerable adverse effects. In addition, portions of roads in the emergency road closure area are utilized by Pacific Gas and Electric Company to control and remove hexavalent chromium from the groundwater. The emergency road closure in the area will help protect public safety and remediation efforts during CERCLA operations, by restricting motorized and mechanized use of the area. The public lands affected are closed to travel by motorized and mechanized vehicle use (including trucks, sport utility vehicles, all-terrain vehicles, cars, motorcycles, bicycles), except for authorized access to private lands and rights-of-way (ROW), use by fire and law enforcement vehicles, emergency activities, and other authorized government uses. The authorities for this emergency closure and restriction order are 43 CFR 8364.1 and 9268.3(d). BLM is implementing this action on 269 acres of public land in San Bernardino County, California. OHV use on the remainder of the public lands administered by the BLM Lake Havasu Field Office will continue to be managed according to existing **Federal Register** orders, and the 1985 Yuma District Resource Management Plan.

Description of Closed Area: This emergency closure affects 269 acres of public lands and roads, subject to the exceptions below, located within the Topock Project area. Public lands in the following described tracts are hereby closed to motorized and mechanized vehicles:

T. 7 N., R. 24 E, portions of sections 5, 6, 7 and 8.

Private lands within the closure boundary are not under the jurisdiction of the BLM, and not affected by this emergency closure.

Exceptions to the Emergency Closure and Restriction Orders

Exceptions to this closure include emergency personnel (law enforcement, fire, medical), authorized BLM personnel, and persons authorized access to private lands and Rights of Way within the closure boundary.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act (FLPMA) of 1976, (43 U.S.C. 1733(a), and 43 CFR 8360–7, if you violate these closures or restrictions on public lands within the boundaries established, you may be tried before a United States Magistrate and fined no more than $1,000 or, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: July 31, 2006.

Timothy Z. Smith,

Field Manager, BLM Lake Havasu Field Office.

[FR Doc. E6–15818 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–55–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft South Florida and Caribbean Parks Exotic Plant Management Plan/Draft Environmental Impact Statement, Big Cypress National Preserve, FL; Biscayne National Park, FL; Canaveral National Seashore, FL; Dry Tortugas National Park, FL; Everglades National Park, FL; Buck Island Reef National Monument, VI; Christiansted National Historic Site, VI; Salt River Bay National Historic Park and Ecological Preserve, VI; and Virgin Islands National Park, VI

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Draft South Florida and Caribbean Parks Exotic Plant Management Plan/Draft Environmental Impact Statement (DEIS) for Big Cypress National Preserve, Florida, Biscayne National Park, Florida, Canaveral National Seashore, Florida, Dry Tortugas National Park, Florida, Everglades National Park, Florida, Buck Island Reef National Monument, Virgin Islands, Christiansted National Historic Site, Virgin Islands, Salt River Bay National Historic Park and Ecological Preserve, Virgin Islands, and Virgin Islands National Park, Virgin Islands.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DEIS must be received no later than 60 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register.**

ADDRESSES: Copies of the DEIS are available on the World Wide Web by accessing *http://parkplanning.nps.gov/EVER,* by request by writing to Sandra Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, CO 80225, by phone (303–969–2068), or the document can be picked-up in person at the participating parks' headquarters.

FOR FURTHER INFORMATION CONTACT: Sandra Hamilton, Environmental Quality Division, National Park Service,

Academy Place, P.O. Box 25287, Denver, Colorado 80225, phone (303–969–2068).

SUPPLEMENTARY INFORMATION: In accordance with the *Federal Noxious Weed Act of 1974,* as amended (7 U.S.C. 280 et seq.), the United States government has designated certain plants as noxious weeds; many of these are exotic plant species. Approximately 1,200 exotic plant species in Florida and the Caribbean have become established in natural areas, and as many as 4% of those exotic plant species have displaced native species. Exotic plants compete aggressively with native plants and are often at an advantage because they have little or no predatory control. Among other problems, exotic plants displace native species, alter native species proportion, degrade or reduce available habitat for threatened and endangered species, consume nutrients, alter fire patterns, reduce recreational opportunities and clog waterways.

The purpose of this DEIS is to (1) provide a programmatic plan to manage and control exotic plants in nine parks in south Florida and the Caribbean; (2) promote restoration of native species and habitat conditions in ecosystems that have been invaded by exotic plants', and (3) protect park resources and values from adverse effects resulting from exotic plant presence and control activities. The DEIS evaluates a range of reasonable alternatives for managing exotic plants in nine parks in south Florida and the Caribbean.

Three alternatives are examined: Alternative A, No Action, *Continue Current Management;* Alternative B, *New Framework For Exotic Plant Management: Increased Planning, Monitoring, and Mitigation;* and Alternative C, *New Framework for Exotic Plant Management: Increased Planning, Monitoring, and Mitigation, with an Emphasis on Active Restoration of Native Plants.* The NPS preferred alternative is Alternative C; the ''environmentally preferred'' alternative is also Alternative C.

At the end of the EIS planning process, the record of decision announces which alternative has been selected to guide future management of exotic plants in the nine parks.

Persons wishing to comment may do so by posting comments on the World Wide Web at *http://parkplanning.nps.gov/EVER* or mailing comments to Sandra Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, CO 80225. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this DEIS is the Regional Director for the Southeast Region, Patricia A. Hooks.

Dated: June 30, 2006.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. E6–15437 Filed 9–26–06; 8:45 am]

BILLING CODE 4310–V6–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105–1106 (Preliminary)]

Lemon Juice From Argentina and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1105–1106 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and Mexico of lemon juice, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by November 6, 2006. The Commission's views are due at Commerce within five business days thereafter, or by November 14, 2006.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* September 21, 2006.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 21, 2006, by Sunkist Growers, Inc., Sherman Oaks, CA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the

expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 13, 2006, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than October 10, 2006, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 18, 2006, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–15851 Filed 9–26–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0082]

Executive Office for United States Attorneys; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Office of Legal Education Nomination/Confirmation Form.

The Department of Justice (DOJ), Executive Office for United States Attorneys, (EOUSA) 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. Comments are encouraged and will be accepted for sixty days until November 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michele Zozom, (202) 616–6969, Executive Office for United States Attorneys, U.S. Department of Justice, 600 E Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing collection in use with an OMB control number.

(2) *The title of the form/collection:* Office of Legal Education Nomination Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice. DOJ Form Number, none. Office of Legal Education, Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency training services. Respondents may represent Federal agencies, as well as State, local, and tribal governments. The Executive Office for United States Attorneys will use the collected information to select class participants, arrange for transportation and reserve rooms; have an address to contact the participant, and an emergency contact.

(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 there will be 21,000 responses annually. It is estimated that each form will take 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 1750 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Information

Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 20, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 06–8209 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0071]

National Drug Intelligence Center; Agency Information Collection Activities: Proposed Reinstatement With Change of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Reinstatement with change of a previously approved collection National Drug Threat Survey.

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), 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. Comments are encouraged and will be accepted for sixty days until November 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin M. Walker, Chief Counsel, National Drug Intelligence Center, Fifth Floor, 319 Washington Street, Johnstown, PA 15901.

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 Reinstatement with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NDIC Form # A–34g.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and local, law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the National Drug Intelligence Center. It provides direct access to detailed drug threat data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,500 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,167 total annual burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 20, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 06–8210 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–DC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 15, 2006, a proposed consent decree in *United States* v. *C&D Technologies, Inc.*, Civ. No. 1:03–cv–413 was lodged with the United States District Court for the Southern District of Indiana.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the Clean Water Act and its pertinent regulations at C&D Technologies, Inc.'s lead acid battery manufacturing facility in Attica, Indiana. Specifically, the United States' complaint alleged: (1) Violations of the Pretreatment Standards for Existing Sources and new sources of pollution (''PSES''), 40 CFR 403, and the PSES for Battery Manufacturing, 40 CFR 403.5(d) and CWA Section 307(d), 33 U.S.C. 1317(d); (2) violations of C&D's National Pollution Discharge Elimination System permit (''NPDES Permit'') and CWA Sections 301 and 402, 33 U.S.C. 1311 and 1342; (3) that C&D through the presence of lead in its effluent prevented the Attica, Indiana, Publicly Owned Treatment Works (''POTW'') from using the POTW's chosen sludge use or disposal practice, in violation of 40 CFR 403.5 and 403.2, and CWA Section 307(d) 33 USC 1317(d); (4) that C&D failing to submit compliance reports in violation of 40 CFR 403.12 and DWA Section 307, 33 U.S.C. 1317; (5) that C&D failed to comply with the PSES for Battery Manufacturing by failing to monitor its effluent for copper content, in violation of 40 CFR 461.34, 40 CFR 403.12(g), and CWA Section 307, 33 U.S.C. 1317 and (6) that C&D failed to comply with certain provisions of a 1997 Administrative Order, in violation of CWA Sections 308 and 309, 33 U.S.C. 1318 and 1319.

Under the proposed Consent Decree, C&D would pay a civil penalty of $1,600,000 and undertake various injunctive relief measures in addition to previous injunctive relief expenditures.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *C&D Technologies, Inc.,* D.J. Ref. 90–5–1–1–06996.

The proposed Consent Decree may be examined at the Office of the United

States Attorney for the Southern District of Indiana, U.S. Courthouse—5th Floor, 46 East Ohio Street, Indianapolis, IN 46204 (contact Asst. U.S. Attorney Thomas Kieper (317)–26–6333)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Larry Johnson (312–886–6609)). During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8297 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on September 1, 2006, a proposed Consent Decree (''Decree'') in *United States* v. *Ford Motor Company*, Civil Action No. 4:06–1311 was lodged with the United States District Court for the Eastern District of Missouri.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 CFR part 82, subpart F, 82.150–82.166, (''Recycling and Emission Reduction''), promulgated pursuant to Subchapter VI of the Clean Air Act (''Stratospheric Ozone Protection''), 42 U.S.C. 7671–7671q. The alleged violations relate to one industrial process refrigeration appliance, which leaked chlorofluorocarbons, at Defendant's assembly plant located in Hazelwood, Missouri.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ford Motor Company*, D.J. Ref. 90–5–2–1–08127.

The Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 111 South Tenth Street, Room 20.333, St. Louis, Missouri 63102, and at U.S. EPA Region VII 901 North Fifth Street, Kansas City, Kansas 66101. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert R. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8296 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 12, 2006 a proposed Consent Decree in *United States* v. *Mallinckrodt et. al*, Civil Action No. 4:02CV1488, was lodged with the United States District Court for the Eastern District of Missouri. In this action the United States sought recovery of response costs incurred by the Environmental Protection Agency at the Great Lakes Container Corporation Superfund Site located in St. Louis, Missouri. The Consent Decree settles claims under CERLA against Lafarge Road Marking, Inc., f/k/a CenterLine Industries, Inc., f/k/a Traffic Paint Mfg., Inc. CHEMCENTRAL H.Q. Corporation, f/k/a/ Missouri Solvents & Chemical Company, Croda Inks Corporation, and Engineered Lubricants Co. The Consent Decree requires each Settling Defendant to pay the EPA Hazardous Substance Superfund $45,713.12 for reimbursement of past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Mallinckrodt, et. al*. D.J. Ref. 90–11–3–07280. The Consent Decree may be examined at the Office of the United States Attorney, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, 20th Floor, St. Louis, MO 63102, and at U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree amy also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (without attachments) or $5.50 (with attachments) for *United States* v. *Mallinckrodt, et. al*. (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–8299 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States and Seaboard Foods LP

Under 28 CFR 50.7, notice is hereby given that on September 15, 2006, a proposed consent decree (''Consent Decree'') between the United States and Seaboard Foods LP (''Seaboard'') was lodged with the United States District Court for the Western District of Oklahoma (Civil Action Number: 06–cv–00989–R).

The Consent Decree would resolve claims asserted by the United States in

a Complaint filed on the same day against Seaboard seeking injunctive relief and the assessment of civil penalties for violations of the Clean Water Act (CWA), 33 U.S.C. 1311 *et seq.,* and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.,* at Seaboard's concentrated animal feeding operations (CAFOs) in the states of Oklahoma, Colorado, Kansas, and Texas.

Specifically, the Complaint alleges that, due to construction activity at its Dorman South Sow Farm Site, located in Beaver County, Oklahoma, Seaboard was required to obtain coverage under the National Permit Discharge Elimination System (''NPDES'') General Permit for Construction Activities (or obtain an individual NPDES permit) and to develop and implement a stormwater pollution prevention plan. In the course of these construction activities, as well as construction activities at one or more of its other CAFO facilities, Seaboard allegedly disturbed greater than five acres and discharged pollutants, including eroded soil, sediment, and other substances associated with earth-disturbing activities, into waters of the United States, without a permit, as required by the Clean Water Act.

In addition, the United States alleges that Seaboard had releases of ammonia emissions in excess of 100 pounds per day at its Choate Sow Farm, located in Kingfisher County, Oklahoma, as well as at one or more other facilities owned by Seaboard. The Complaint alleges that Seaboard failed to timely notify the U.S. Environmental Protection Agency's National Response Center, as required by section 103(a) of CERCLA, 42 U.S.C. 9603(a), regarding these releases.

The Consent Decree provides for the payment of a civil penalty of $205,000 and requires Seaboard to implement stormwater discharge and erosion measures at 16 farms, as well as to establish and maintain buffer strips surrounding sensitive wetland areas at 17 farms—which are located in Kingfisher, Beaver, or Texas County, Oklahoma. In addition, for five years after entry, the Consent Decree requires Seaboard to apply for and comply with the terms of the Construction General Permit at any new or existing Seaboard facility where there is construction that disturbs greater than one acre, regardless of whether the construction is likely to result in a discharge to a water of the United States.

The Consent Decree acknowledges that Seaboard has certified its compliance with the requirements set forth in section 103(a) of CERCLA, 42 U.S.C. 9603(a) and section 304 of the Emergency Planning and Community Right to Know Act (''EPCRA''), 42 U.S.C. 11004, to report continuous releases of certain air emissions from listed facilities in Oklahoma, Texas, Kansas and Colorado. As such, the Consent Decree resolves the civil claims of the United States under section 109(c) of CERCLA, 42 U.S.C. 9609(c), and section 325 of EPCRA, 42 U.S.C. 11045, through the date of lodging, for Seaboard's failure to notify the National Response Center, in violation of section 103 of CERCLA, 42 U.S.C. 9603, and for Seaboard's failure to notify the state emergency response commissions and local emergency planning committees, in violation of section 304 of EPCRA, 42 U.S.C. 11004, at each of the listed facilities.

Finally, the Consent Decree notes that EPA issued a Monitoring Request to Seaboard Farms, Inc. (now Seaboard Foods LP) and Mission Funding, LLC on April 2, 2002, pursuant to section 114 of the Clean Air Act, 42 U.S.C. 7414, directing it to undertake, complete, and report upon the monitoring, measuring, and estimating of certain air pollutants. The Consent Decree resolves any civil claims of the United States under section 113(b) of the CAA, 42 U.S.C. 7413(b), for failure to comply with this Request, and states that entry of the Decree will serve to withdraw the Request. In this regard, the lodging of this Decree on or before September 15, 2006, serves to validate a separate Order of the U.S. EPA Environmental Appeals Board which directly addresses the monitoring of air pollutants from Seaboard's facilities, entitled *Consent Agreement and Proposed Final Order for Animal Feeding Operations—Seaboard Foods LP* (August 21, 2006).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Seaboard Food LP,* Civil Action No. 06–cv–00989–R; D.J. Ref. No. 90–5–1–1–07570.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, 210 Park Avenue, Suite 400, Oklahoma City, OK 73102, and at U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.25 (61 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8287 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States and Seaboard Foods LP and PIC USA, Inc.

Under 28 CFR 50.7, notice is hereby given that on September 15, 2006, a proposed consent decree (''Consent Decree'' between the United States and Seaboard Foods LP and PIC USA, Inc. was lodged with the United States District Court for the Western District of Oklahoma (Civil Action Number: 06–cv–00990–R).

The Consent Decree would resolve claims asserted by the United States in a Complaint filed on the same day against Seaboard Food LP and PIC USA, Inc. (collectively, ''Defendants'') seeking injunctive relief and assessment of civil penalties for violations of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901 *et seq.*, at certain concentrated animal feeding operations in Oklahoma that are now owned and/or operated by Seaboard Foods LP and were, at the relevant time, owned and/or operated by PIC USA, Inc.

Specifically, the Complaint alleges that on June 26, 2001, EPA issued an Administrative Order pursuant to RCRA 7003(b), 42 U.S.C. 6973(b), Order No. RCRA–06–2001–0908, to Seaboard Farms, Inc. (now Seaboard Foods LP) and PIC International Group, Inc., concerning the following farms: (a) Lacey (a.k.a. Bryan Sow & Norris Farms), located in Kingfisher County, Oklahoma; (b) Lacey 3 (a.k.a. Watson), located in Kingfisher County,

Oklahoma; (c) Lacey 4 (a.k.a. Grimes Finisher), located in Kingfisher County, Oklahoma; (d) Lacey 6 (a.k.a. Miller) located in Kingfisher County, Oklahoma; (e) Fairview Nursery Complex (Fairview Nurseries 1–4), located in Major County, Oklahoma. The Order requires the Defendants to identify, investigate, and prevent the mishandling of any solid waste which may present an imminent and substantial endangerment to human health and/or the environment and to ensure that remedial action deemed necessary by the EPA be designed and implemented to protect human health and/or the environment. The Complaint alleges that Defendants willfully violated, or failed or refused to comply with the Administrative Order issued by EPA.

The Consent Decree provides for the payment of a civil penalty of $240,000 and requires Defendants to perform various groundwater remediation and source control measures (including infrastructure repairs, lagoon removals, and soil, leachate, and groundwater testing and monitoring related to the land application of effluent) at the above-named farms, as well as the Choate Sow Farm, located in Kingfisher County, Oklahoma.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Seaboard Foods LP and PIC USA, Inc.*, Civil Action No. 06–cv–00990–R; D.J. Ref. No. 90–5–1–1–07570/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, 210 Park Avenue, Suite 400, Oklahoma City, OK 73102, and at U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.75 (67 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Coastal Decree Library at the stated address.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8288 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 18, 2006, a proposed consent decree (''Consent Decree'') in *United States* v. *Thomasville Furniture Industries, Inc. et al.,* Civ. No. 6:05CV00001, was lodged with the United States District Court for the Western District of Virginia.

In this action, the United States sought, under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), to recover costs incurred by the Environmental Protection Agency (''EPA'') in performing a drum removal action in 1999 at the Buckingham County Landfill Superfund Site (''Site'') in Dillwyn, Virginia from Buckingham County, a political subdivision of the Commonwealth of Virginia, who is the current owner and operator of the Site. Under the terms of the Consent Decree, Buckingham County has agreed to pay $186,952 of EPA's unreimbursed 1999 Drum Removal Costs of $196,791. This represents a 95% recovery of the 1999 Drum Removal Costs. The County's payments will be made in three installments. The first payment of $62,318 will occur 30 days after entry of the Consent Decree. The next payment of $62,317 will occur one year after the entry of the Consent Decree, and the final payment of $62,317 will occur within 2 years of the entry of the Consent Decree. Under the Decree, the Country will receive a covenant not to sue for the 1999 Drum Removal Costs. The proposed settlement addresses past costs only, and thus the Consent Decree reserves all parties' rights with regard to future costs. The attached Consent Decree is consistent with the Superfund statue and is in the public interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Thomasville Furniture Industries, Inc. et al.,* Civ. No. 6:05CV00001. D.J. Ref. 90–11–2–07971.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Virginia, 105 Franklin Road, SW., Suite 1, Roanoke, VA 24011, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.75 (15 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8298 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 19N]

Commerce in Explosives; List of Explosive Materials (2006R–2P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Justice.

ACTION: Notice of List of Explosive Materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The

list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). This notice publishes the 2006 List of Explosive Materials.

DATES: The list becomes effective upon publication of this notice on September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Bangs, Chief; Explosives Industry Programs Branch; Arson and Explosives Programs Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–2310).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has not added any new terms to the list of explosives or removed or revised any listing since its last publication.

This list supersedes the List of Explosive Materials dated December 12, 2005 (Docket No. ATF 18N, 70 FR 73483).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium perchlorate explosive mixtures.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1,2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.

Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Approved: September 18, 2006.

Michael J. Sullivan,

Acting Director.

[FR Doc. E6–15850 Filed 9–26–06; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Infrastructure Integration Consortium

Notice is hereby given that, on August 22, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), Vehicle Infrastructure Integration Consortium (''VIIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Toyota Motor Engineering & Manufacturing North America, Inc., Ann Arbor, MI; and General Motors Corporation, Warren, MI have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VIIC intends to file additional written notification disclosing all changes in membership.

On May 1, 2006, VIIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 2006 (71 FR 32128).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–8294 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Extension of a Currently Approved Collection: Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Helping America's Youth Community Resource Inventory.

The U.S. Department of Justice (DOJ) has submitted on behalf of the Executive Office of the President 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 request is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 71, Number 145, pages 42879–42880, on July 28, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: U.S. 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Helping America's Youth Community Resource Inventory.

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice on behalf of the Executive Office of the President.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals and organizations involved in building partnerships to help youth.

Other: None.

Abstract: This is an online database provided as a service to communities that wish to identify local youth-serving programs and resources. Participation is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond or reply:* It is estimated that it will take 500 respondents approximately 80 hours each to enter the data.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40,000 total annual burden hours associated with this collection.

If additional information is required, contact Ms. Lynn Bryant, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 20, 2006.

Lynn Bryant,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 06–8211 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0237]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of NCJRS Customer Satisfaction Surveys.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following extension of generic clearance for surveys to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed generic clearance extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 169 page 51857 on

August 31, 2006 allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until October 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Ballweber, (202) 305–2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* DOJ requests three year extension of generic clearance to conduct customer satisfaction surveys.

(2) *Title of the Form/Collection:* Generic Clearance of NCJRS Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms Numbers:* NCJ–CR–01–00—NCJ–CR–01–06. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond to survey request, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students.

The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 75,195 total respondents for all surveys combined. It is estimated that mail surveys will average 10 minutes to complete; Web surveys will average 6 minutes; phone surveys will average 4 minutes to complete; and focus groups and teleconferences will average 90 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection is 21,894 hours. An estimate of the annual public burden associated with this collection is 7,298 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 20, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 06–8212 Filed 9–26–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11375, et al.]

Proposed Exemptions; Frank D. May, D.M.D., P.A. 401(k) Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or fax. Any such comments or requests should be sent either by e-mail to: *Amoffitt.betty@dol.gov,* or by fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Frank D. May, D.M.D., P.A., 401(k) Profit Sharing Plan and Trust (the Plan), Located in Port St. Joe, Florida

[Exemption Application No. D–11375]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code [1] shall not apply to the proposed sale of shares of stock (the Stock) in Diente Y Clavo, S.A. (DyC) from the individually directed account in the Plan of Frank D. May, D.M.D. (the Account) to Frank D. May, D.M.D. (Dr. May), a party in interest with respect to the Account, provided the following conditions are satisfied:

a. The sale of the Stock to Dr. May is a one-time transaction for cash;

b. Dr. May purchases the Stock for a purchase price that reflects the fair market value of the underlying assets of DyC;

c. The fair market value of the underlying assets of DyC is determined by an independent, qualified appraiser, as of the date the transaction is entered;

d. The Account is not responsible for and does not pay any fees, commissions, or other costs, or expenses associated with the sale of the Stock, including the cost of filing the application and notifying interested persons;

e. Dr. May is the only participant in the Plan whose Account is affected by the transaction, and the sales proceeds from the transaction will be credited to such Account simultaneously with the transfer of title to the Stock to Dr. May; and

f. The terms and conditions of the sale of the Stock are at least as favorable to the Account as terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated third party.

Summary of Facts and Representations

1. Dr. May is a dentist who is the sole practitioner in the firm of Frank D. May, D.M.D., P.A. (the Employer), the sponsor of the Plan. Dr. May is the President, sole director, and an employee of the Employer. Dr. May's dental practice is located in Port St. Joe, Florida.

2. The Plan is a 401(k) profit sharing plan that was established by the Employer, effective January 1, 2004, for the benefit of the employees of the Employer. Dr. May is a party in interest with respect to the Plan, pursuant to 3(14)(E) of the Act, as the sole owner of the Employer whose employees are covered by the Plan.

The trustee of the Plan is Dr. May. As such, Dr. May is a fiduciary to the Plan, pursuant to 3(14)(A) of the Act.

Pursuant to the provisions of the Plan, each participant has the right to direct investments for his or her own respective account. In such instances, the investments are earmarked for the accounts of the participants directing such investments. Dr. May is a fiduciary, pursuant to 3(14)(A) of the Act with respect to directing the investment for his Account.

3. As of April 25, 2006, the date of the application for exemption, the estimated number of participants and beneficiaries covered by the Plan is nine (9). As of the same date, the number of participants and beneficiaries affected by the proposed exemption is one (1), as the subject transaction involves only the individually directed Account of Dr. May. It is represented that no funds have been expended by the accounts of any participants of the Plan, other than Dr. May's Account, with regard to the acquisition and holding of the Stock and its underlying real and personal property.

4. As of April 25, 2006, the approximate aggregate fair market value of the total assets of the Plan held in trust is $476,870.98. As of the same date, the approximate aggregate fair market value of the assets of Dr. May's Account is $304,607.63. It is represented that the funds in Dr. May's Account were originally contributed to the Plan by use of a rollover which was authorized under Section 3.7 of the Plan.

5. DyC is a Panamanian company formerly known as Auckland Business, S.A. (Auckland). Dr. May, his wife, Carla Andra May, (Mrs. May) and Morris and Theresa Palmer (Mr. and Mrs. Palmer, or collectively, the Palmers) are officers and directors of DyC. The Palmers are friends and business partners of Dr. and Mrs. May. In this regard, it is represented that Dr. May invests in several real estate properties in Panama jointly with the Palmers.

DyC was incorporated on July 2, 2004, to acquire and hold title to real property (the Property) located approximately 455 kilometers (some 284.2 miles) from Panama City, in the Republic of Panama.

Prior to the time DyC acquired title to the Property, a bank had foreclosed upon a holding corporation which owned the Property, it being represented that the owner of the holding company was in jail. It is represented that a local Panamanian real estate agent, showed the Property to Dr. May and the Palmers. The real estate agent through his own company's wholly-owned subsidiary, Auckland, acquired title to the Property by purchasing the holding company from the bank's foreclosure company.

It is represented that Dr. May and the Palmers retained counsel in Panama in order to begin the process of buying the Property on behalf of Dr. May's Account and on behalf of the Palmers by acquiring the stock of Auckland. It is represented that Panamanian counsel drew up the contract for sale with numerous conditions designed to protect the purchasers through the closing period and beyond. It is represented that when all the conditions of the contract were met, and the contract was closed, Dr. May's Account and the Palmers each received bearer stock in Auckland. Subsequently, when Auckland's name was changed to DyC, Dr. May's Account and the Palmers received the Stock which is the subject of this exemption request in exchange for the bearer stock in Auckland.

6. It is represented that DyC has 100 shares of Stock issued, authorized, and outstanding. Between July 20, 2004, and November 24, 2004, it is represented that the Account paid in installments $142,500 in cash to acquire fifty (50) shares of Stock in DyC, representing a 50 percent (50%) interest in DyC.[2] In

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless other specified, refer also to the corresponding provisions of the Code.

[2] Dr. May maintains that the acquisition and holding by his Account of Panamanian real property through an interest in a Panamanian company does not violate section 404(b) of the Act,

addition to the purchase price, the expenses paid by the Account with respect to its ownership of a fifty percent (50%) interest in DyC has been a $3,500 payment to Panamanian counsel for legal expenses relating to the acquisition and $2,080 for security and caretaker services. The remaining fifty (50) outstanding shares of Stock in DyC, representing a fifty percent (50%) interest in DyC, is owned by Mr. and Mrs. Palmer.

It is represented that the purchase of the Stock by the Account was made with the expectation that the Stock would be held for long term appreciation for a period of approximately ten (10) years or more.

7. The applicant represents that an appraisal of the Property was not obtained when DyC acquired title to such Property. In this regard, it is represented that Dr. May has significant experience with the acquisition and ownership of coastal real estate, including other properties in Florida and Panama. Dr. May represents that he has relied on his own ability, investigation, and research in acquiring real property and has never secured an appraisal, unless one was required for financing.[3]

8. Allen E. Candanedo (Mr. Candanedo), Vice President of Comivensa, S.A., an appraisal firm located in Panama, did prepare an appraisal report, dated March 14, 2006, of the fair market value of the Property underlying DyC, as of December 31, 2004, and, as of March 2, 2006.

It is represented that Mr. Candanedo is qualified to appraise the Property in that he has been an officer and General Manager since 1980 of a corporation specializing in private and commercial real estate appraisals and agricultural or cattle appraisals.

Mr. Candanedo represents that he is independent in that he has no past, present, or contemplated interest in the Property and has no personal interest in the parties involved. Further, Mr. Candanedo represents that he has no bias with respect to the Property that is the subject of his appraisal report or with respect to the parties involved in his assignment. Mr. Candanedo's fee for preparing the appraisal was not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event related to the intended use of such appraisal.

In his appraisal report, Mr. Candanedo indicates that when acquired by DyC the Property consisted of approximately 437.367 acres (177 hectares) held in four separate parcels (Parcels 1, 2, 3, and 4) in the area known as ''Los Buzos,'' County of Guanico, District of Tonosi, Province of Los Santos, in the Republic of Panama. The area surrounding the Property is predominately rural with some agricultural activity in the lowlands. No public utilities, including water works, telephone service, or electricity, are available to the Property.

Parcels 1, 2, and 3 consist of adjoining lots of pastureland located in the hills and lowlands of the community of Salamin. There are no visible improvements on Parcel 1, 2, or 3, except for some barbed wire and live posts which comprise the internal divisions in the parcels. The only access to Parcel 1, 2, and 3 is by foot or on horseback. It is represented that Parcel 1, 2, and 3 are best suited for cattle ranching.

Parcel 4 is a beachfront property. There are some palm-roofed beach huts used by the caretaker and visitors to the beach area. The closest transportation service available is a dirt road that divides Parcel 4 into two lots (Lot A and B), one by the beach and the other described as undulating pastureland. It is represented that Parcel 4 is best suited for recreational activities.

In his appraisal report of March 14, 2006, Mr. Candanedo identifies the property number, the description, the approximate area, and the fair market value of Parcels 1, 2, 3, and 4 included in the Property, as of December 31, 2004, and as of March 2, 2006, as follows:

Parcel No./Lot No. (Property No.) and description	Approximate area (in hectares)	Value in dollars as of 12/31/04	Value in dollars as of 3/2/06
Parcel 1 (#12,989) Pastureland	120.6	$102,541.62	$91,328.86
Parcel 2 (#17,771) Pastureland	22.4	26,908.31	24,095.99
Parcel 3 (#17,963) Pastureland	7.0	10,554.33	13,724.30
Parcel 4 (#7,139) Lot A: Beachfront	Lot A: 5.4	Lot A: 122,400.00	Lot A: 125,120.00
Lot B: Pastureland	Lot B: 21.8	Lot B: 32,640.00	Lot B: 33,728.00
Totals		295,044.26	287,997.15

According to Mr. Candanedo, the aggregate adjusted commercial value of the Property (177.2 hectares) on December 31, 2004, was approximately $295,000, and the aggregate adjusted commercial value of the Property (155

so long as stock in such company was held in the United States. Section 404(b) of the Act provides in pertinent part that: ''no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States,''

In this regard, it is represented that on March 3, 3005, stock certificate #3, representing fifty (50) shares of DyC was issued to the Account by signature of Mr. and Mrs. Palmer. It is represented that such stock certificate is presently in the possession of Dr. May, acting as trustee on behalf of his Account, and is physically present in Port St. Joe, Florida. Dr. May represents that such stock certificate has been physically present in the United States and in Dr. May's continuous possession and control from at least as early as April 3, 2005, (thirty days after its issue date). Prior to April 3, 2005, Dr. May represents that the Account's interest was at all times protected by Panamanian counsel which held the bearer stock in Auckland (subsequently, the DyC Stock) from the time the Account's funds were invested in Auckland on or about July 20, 2004.

The Department, herein, is providing no relief from any violation of the ''indicia of ownership provisions,'' as set forth section 404(b) of the Act that may have arisen as a result of the acquisition and holding by the Account of the bearer stock in Auckland, the Stock in DyC, or the acquisition and holding of an Interest in the Property through ownership by Auckland or DyC.

[3] The Department notes that the acquisition and holding by the Account of the bearer stock in Auckland, the Stock in DyC, and the underlying Property is subject to the general fiduciary responsibility provisions of part 4 of the Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the participants and beneficiaries of a plan, when making investment decisions on behalf of such plan. The Department, herein, is providing no relief from any violation of section 404 of the Act that may have arisen as a result of the acquisition and holding by the Account of the bearer stock in Auckland, the Stock in DyC, or the acquisition and holding of an interest in the Property through ownership of Auckland or DyC.

hectares), as of March 2, 2006, is approximately $288,000. It is represented that the decrease in the March 2, 2006, adjusted commercial value of the Property reflects the net loss of approximately 56.5 acres (22.2 hectares) of land due to a boundary dispute with the former owner, which according to the applicant is presently the subject of legal proceedings.

In his appraisal report, Mr. Candanedo states that the registered owner of the Property is Auckland. However, the applicant represents that listing the registered owner of the Property as Auckland is a matter of appraiser error, as Auckland's name was changed to DyC in the fall of 2004.

9. In addition to the Property, DyC also owns 100 percent (100%) interest or 100 shares of the issued and outstanding stock in a Panamanian company known as Damy Resources Corporation (Damy). It is represented that Damy was incorporated for the purpose of acquiring title to a boat in Panama. As the Account and the Palmers each own a 50 percent (50%) interest in DyC, the Account and the Palmers currently are the indirect owners of all of the stock of Damy.

It is represented that a titling error occurred when the stock in Damy was issued. Title was inadvertently taken in the name of DyC, because at the time of the purchase of the boat, DyC was the only company that had established an adequate banking relationship in Panama through which funds could be transferred to make the purchase. It is represented that instead of 100 shares being issued to DyC, 50 shares of stock in Damy (a 50% interest) should have been issued to Mr. Palmer and 50 shares of stock in Damy (a 50% interest) should have been issued to Dr. May, individually.

Damy purchased the boat for a cost of $28,500 of which $14,250 of the acquisition price was paid by Mr. Palmer and $14,250 of the acquisition price was paid by Dr. May, individually. It is represented that $2,975 in maintenance and $745 in insurance premiums on the boat were paid from a joint account which Dr. May and the Palmers maintain in Panama for dealing with several investments in Panama which Dr. May and the Palmers own jointly. It is represented that the records of expenses for these investments were not kept separately in this joint account. Accordingly, detailed documentation or records on payments for maintenance and insurance on the boat are not readily available. When funds were required to keep up the balance in this joint account, it is represented that Dr. May would make a wire transfer from his personal, individual funds into this joint account for his share of the expenses. It is represented that none of the cost to acquire the boat or to maintain or insure the boat were paid by Dr. May's Account in the Plan.

It is represented that Dr. May has on occasion made personal use of the boat. It is represented that Dr. May was investigating the procedure to correct the titling error when in June of 2006, eighteen months after its purchase, the boat was destroyed in a storm. Insurance adjustments on the boat are still pending.[4]

10. On the basis of Mr. Candanedo's appraisal of the value of the Property underlying DyC (but not including the value of the boat), it is represented that, as of March 2, 2006, the value of the Stock in DyC owned by Dr. May's Account is $144,000. The Stock in Dr. May's Account constitutes approximately 47.27 percent (47.27%) of the value of such Account.[5]

11. From the time DyC acquired title to the Property through the date of this application request, it is represented that Dr. May has never used the Account's Property in Panama. However, Dr. May visited the Property prior to the acquisition by the Account to evaluate whether to invest in the Property and to assist the appraiser. In addition, Dr. May has been on the Property to assist with issues relating to fencing the Property and securing the Property against trespassers, squatters, and intruders.

12. It is represented that the investment by the Account in the Property through its interest in DyC has resulted in continuing, unanticipated expenses required to protect the Property from trespassers, squatters, and intruders. These expenses include hiring security, the salaries for two full-time caretakers, legal expenses, the cost of securing permits and building shelters to house the caretakers, and obtaining vehicles to enable caretakers to protect the Property. It is represented that the Account does not have adequate resources to pay these continuing expenses and at the same time provide for the retirement needs of Dr. May. Accordingly, it is represented that Dr. May has individually paid a total of $72,360, as of July 14, 2006, in expenses of the Account, as follows: (1) $23,500 in legal fees, (2) $46,350 in construction expenses relating to caretakers quarters, fencing, grounds maintenance, and labor, and (3) $2,510 for security. It is represented that there was never any formal agreement that the Plan would repay to Dr. May the funds he advanced to the Account.[6] It is further represented that the funds were expended by Dr. May to protect the Property, were never intended to be contributions to the Plan, and were not treated as contributions to the Plan. As such, the contribution limits, as set forth in section 415 of the Code, were not violated.

13. In order to relieve the Account from the prospect of continuing to incur the considerable expenses, described above, the applicant has requested an exemption for the sale of the Stock by the Account to Dr. May for cash at a price equal to the current fair market value of the Account's undivided 50 percent (50%) interest in DyC, established at the time of the sale by an independent, qualified appraiser. It is represented that the sale of the Stock to Dr. May is the only viable option, as the Palmers have no interest in investing more funds to acquire the Account's Stock or to assume more responsibility for the expenses and costs of maintaining and defending the Property. Further, Dr. May maintains that finding an unrelated third party purchaser would be difficult and time consuming, even if the Palmers were willing to accept an unrelated third party co-investor.

[4] The Department is not providing retroactive relief, herein, with respect to any violations of section 406 of the Act that may have risen from the past use of the boat by Dr. May or any payment by Dr. May, involving the acquisition price of the boat or the maintenance and insurance expenses of the boat. In this regard, Dr. May does not concede that the boat was ever an asset of the Account, due to the titling error and due to the fact that the funds of the Account were not spent to acquire, maintain, operate, or insure the boat. However, Dr. May has represented that within 30 days of the date of the granting of this proposed exemption, he will file the FORM 5330 with the Internal Revenue Service (IRS), and pay any excise tax, plus interest to the IRS, and any correction amount deemed to be due and owing.

[5] The Department notes that the value of the DyC Stock constitutes a substantial percentage of the assets of the Account. In this regard, the fact that the Stock in DyC is the subject of an administrative exemption under section 408(a) of the Act does not relieve fiduciaries of the general standards of fiduciary conduct under section 404 of the Act, nor does such an exemption insulate a fiduciary from potential liability under section 404 of the Act. Section 404(a)(1)(C) of the Act requires, among other things, that a fiduciary diversify the investment of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to go so. It is the responsibility of the fiduciary of the plan to determine whether the diversification requirements of section 404(a)(1)(C) have been satisfied.

[6] The Department is not providing retroactive relief, herein, with respect to any violations of section 406 of the Act that may have arisen from any payments by Dr. May of the expenses incurred by the Account. Dr. May represent that within 30 days of the date of the granting of this proposed exemption, he will file the FORM 5330 with the IRS, and pay any excise tax, plus interest, to the IRS, and any correction amount deemed to be due and owing with regard to any such payments of expenses.

The proposed transaction would constitute a prohibited sale or exchange between the Account and a party in interest and would violate the provisions of the Act against a fiduciary engaging in self-dealing and conflicts of interest. Accordingly, Dr. May has requested relief from sections 406(a), 406(b)(1) and 406(b)(2) of the Act.

14. It is represented that the proposed transaction is in the best interest of the Account because the sale of the Stock will relieve the Account of the continued expense of protecting the Property from trespassers, squatters, and intruders and other expenses. In addition, the sale of the Stock will divest the Account of an illiquid, non-income producing asset, will increase the liquidity of the Account's portfolio, and will facilitate diversification of the Account's assets.

15. It is represented that the proposed transaction is feasible in that the sale will be a one-time cash transaction.

16. It is represented that the proposed transaction is protective of the Account, because the fair market value of the Property underlying the Stock will be updated on the date of the transaction by an independent, qualified appraiser. Further, the Account will not be required to pay any real estate fees or commissions or other expenses or costs in connection with the subject transaction.

17. In summary, the applicant represents that the proposed transaction will satisfy the statutory requirements for an exemption under section 408 (a) of the Act because:

a. The sale of the Stock to Dr. May will be a one-time transaction for cash;

b. Dr. May will purchase the Stock for a purchase price that reflects the fair market value of the underlying assets of DyC;

c. The fair market value of the Property will be determined by an independent qualified appraiser, as of the date the transaction is entered;

d. The Account will not be responsible for and will not pay any fees, commissions, or other costs, or expenses associated with the sale of the Stock, including the cost of filing the application and notifying interested persons;

e. Dr. May is the only participant in the Plan whose Account is affected by the transaction, and the sales proceeds from the transaction will be credited to such Account simultaneously with the transfer of title to the Stock to Dr. May; and

f. The terms and conditions of the sale of the Stock will be at least as favorable to the Account, as terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated third party.

Notice to Interested Persons

Because Dr. May is the only participant in the Plan whose Account will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Accordingly, comments and requests for a hearing are due 30 days after publication of the Notice of Proposed Exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

Proposed Amendment to Prohibited Transaction Exemption (PTE) 2001–32 Involving Development Company Funding Corporation Located in the District of Columbia

[Application No. D–11392]

Proposed Exemption

Based on the facts and representations set forth in the Application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 2001–32 as set forth below:

Section II. D. of PTE 2001–32 is amended to read: ''The Trustee is not an affiliate of any other member of the Restricted Group, other than, effective on or after October 1, 2006, the Central Servicing Agent.''

If granted, the amendment will be effective as of October 1, 2006.

Summary of Facts and Representations

1. The Small Business Administration (SBA), through its agent, the Development Company Funding Corporation (DCFC or the Applicant), requests that the Department amend PTE 2001–32, 66 FR 46823 (September 7, 2001) (PTE 2001–32). This exemption provides relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of certain provisions of section 4975(c)(1) of the Code. PTE 2001–32 was granted to DCFC and involves an SBA program to provide financing for small businesses through the sale of certificates representing a beneficial ownership interest in a pool of debentures held in trust. The debentures are issued by certified development companies (CDCs) to fund loans to small businesses. The proposed amendment, if granted, would revise the condition in Section II.D. of PTE 2001–32, which currently requires that the Trustee not be an affiliate of any other member of the Restricted Group, in order to permit the Trustee and the Central Servicing Agent to be related.

2. The SBA is an agency established pursuant to the Small Business Act, which authorized the SBA to establish a program to provide financing to small businesses for projects that further one or more economic development objectives (the 504 Program) and meet certain eligibility criteria specified in the 504 Program regulations. Under the 504 Program, financing is provided to small businesses by the CDCs. A small business applies for 504 Program assistance to the CDC serving the area in which the project is located. If the SBA approves the project, permanent financing is arranged. The CDC's contribution to the project financing is raised by the CDC's issuance of a debenture. Under authority granted in 15 U.S.C. 697(a), the SBA guarantees the timely payment of all principal and interest as scheduled on this debenture; the full faith and credit of the United States is pledged to the payment of these guaranteed amounts. The interest rates of the loan and of the debenture are set by the SBA and approved by the Secretary of the Treasury.

3. Regulations issued under the Small Business Investment Act (the SBIA) require the SBA and CDC to appoint a selling agent to select underwriters, negotiate the terms of debenture offerings with the underwriters, and direct and coordinate debenture sales. The selling agent agrees to sell a specified amount of SBA-guaranteed debentures (the debenture pool) to the underwriters under a Debenture Purchase, Pooling and Exchange Agreement. All debentures within a debenture pool have identical stated interest rates, payment dates, and terms to maturity. The underwriters assign the debenture pool to the trustee in exchange for participation certificates. The trustee issues the participation certificates as a series of the trust established by a 1986 trust agreement (the Trust). The SBA agrees to issue its guarantee on the certificates. The Department of the Treasury approves the negotiated sale price and coupon on the certificates. The underwriters sell the certificates to investors and the proceeds, less an underwriting commission, are distributed to the CDC's selling agent, acting through a servicing agent, which transfers the funds to the CDC to fund the 504 Program loans.

SBIA regulations require the appointment of a fiscal agent to assess the financial markets, arrange for the production of documents required for offering certificates, and monitor the performance of the trustee and the underwriters. DCFC has been appointed as fiscal agent for the SBA under a Fiscal Agency Agreement with the SBA and as selling agent for CDCs that issue debentures which DCFC sells to underwriters pursuant to a Selling Agency Agreement with the SBA. DCFC is a District of Columbia not-for-profit corporation that was created to facilitate 504 Program transactions. Payments to DCFC of its fees as fiscal agent and selling agent are made from the master reserve account, described below.

4. The regulations also provide for the designation by the SBA of a central servicing agent to support the orderly flow of funds among the borrowers, CDCs and SBA. SBA has engaged Colson Services Corp. (Colson or Central Servicing Agent) to act as central servicing agent, receiving and disbursing funds wired by the underwriters, and servicing payments on the debentures. Colson collects a monthly servicing fee from the borrower of each 504 Program loan. Colson was awarded the contract to act as central servicing agent through a competitive bidding process. Colson is required by SBIA regulation to provide a fidelity bond or insurance in an amount that fully protects the government.

The master servicing agreement entered into between Colson and the SBA, effective September 29, 1988, requires that Colson carry a fidelity bond or similar insurance in an amount commensurate with the level of funds in its possession, but not less than $10 million. In addition, the master servicing agreement requires Colson to maintain a standard Banker's Blanket Bond insurance policy in an amount ''customary and sufficient'' to protect against loss caused by actions of Colson, its employees or agents. The master servicing agreement requires Colson to maintain certain accounts to hold funds that are in Colson's custody in connection with the 504 Program. The master servicing agreement specifies the accounts to be maintained and the payments to be made, and imposes timing and other performance requirements.

5. Prior to October 1, 2006, Colson maintained accounts required under the master servicing agreement at J.P. Morgan Chase & Co., which had recently purchased Colson. The master servicing agreement limits the investment of funds in these accounts to debt obligations issued or guaranteed by the U.S. government and money market funds that hold these types of investments. Investment earnings are sufficient to pay the trustee and investment management fees charged in connection with the account, and a fee to Colson for record-keeping services that Colson provides for the accounts. Investment earnings in excess of these fees are disbursed semiannually to the CDCs. Colson maintains a master reserve account through which all funds related to the 504 Program loans and the debentures flow.

The master servicing agreement requires Colson to deliver periodic status reports to the SBA, and requires independent audits of Colson's financial statements and operations each year. It also provides for a contracting officer to administer the contract on behalf of SBA and for a contracting officer's technical representative to monitor all technical aspects of and to assist in administering the contract. SBA and its authorized representatives have the right of access and inspection of Colson's facilities and records relating to the operations of the 504 Program. Colson may forfeit its right to its fees if, in the determination of the SBA, it has not submitted required reports or performed required services, unless the failure is beyond its control and without its fault. In addition, SBA may terminate the contract for default by Colson, including Colson's failure to perform its obligations in a timely manner, as well as Colson's insolvency or the filing of a petition in bankruptcy by or against Colson if the petition is not dismissed or withdrawn within 90 days.

6. The regulations also require appointment of a trustee to issue and transfer the certificates, maintain registries of the debentures and the certificates, hold the debentures for the benefit of the SBA and the certificateholders, receive payments on the debentures and disburse payments on the certificates. None of the administrative fees paid by the borrower (including the SBA guarantee fee, funding fee, the CDC processing fee, closing costs and the underwriter's fee) are paid out of the Trust. The trustee, as holder of a debenture guarantee agreement with the SBA with respect to any pool of debentures, has the right to enforce the SBA's guarantee for the benefit of the holders of the certificates in the related series. Harris Trust Company of New York (Harris Trust) was appointed as trustee and entered into a trust agreement dated as of December 1, 1986 with the SBA and with DCFC as fiscal agent. Effective May 8, 2000, The Bank of New York (The Bank of NY or Trustee), a wholly owned subsidiary of the Bank of New York Company, Inc. (The Bank of NY Co.), succeeded Harris Trust as trustee. Under the 1986 trust agreement, as amended (the 1986 Trust Agreement), the trustee is compensated by the SBA from time to time as shall be agreed.

7. PTE 2001–32 provides relief for a plan's purchase of the certificates, despite the fact that various entities involved in the loan program (*e.g.*, the underwriter or the trustee) may be parties in interest with respect to the plan. Specifically, the exemption provides relief from: (1) Sections 406(a) and 407(a) of the Act for the sale, exchange or transfer of certificates in the initial issuance of such certificates between the underwriter and a plan, the plan's acquisition or disposition of such certificates in the secondary market, and the plan's continued holding of such certificates; (2) sections 406(b)(1) and (b)(2) of the Act for the sale, exchange or transfer of certificates in the initial issuance of certificates between the underwriter and a plan, when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is obligated to make payment on a loan related to a debenture contained in the Trust, the plan's acquisition or disposition of such certificates in the secondary market and the continued holding of such certificates by a plan; and (3) sections 406(a), 406(b) and 407(a) of the Act for transactions in connection with the servicing, management and operation of the Trust. For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2001–32, refer to the proposed exemption at 66 FR 36005 (July 10, 2001) and the grant notice at 66 FR 46823 (September 7, 2001).

8. The SBA, through its agent, DCFC, requests that the Department amend PTE 2001–32 to permit two parties to the 504 Program securitization transactions; Colson, the Central Servicing Agent, and The Bank of NY, the Trustee (as these terms are defined in PTE 2001–32), to be affiliated. The specific relief requested as it relates to the text of PTE 2001–32, is to revise the condition in Section II.D., which currently requires that the Trustee not be an affiliate of any other member of the Restricted Group, in order to permit the Trustee and the Central Servicing Agent to be related. The Central Servicing Agent is currently a member of the Restricted Group. According to the Applicant, the requested relief can be accomplished by amending Section II.D. to read: ''The Trustee is not an

affiliate of any other member of the Restricted Group, other than, effective on or after October 1, 2006, the Central Servicing Agent.''

9. The request is made in the context of a pending acquisition by The Bank of NY Co. of JPMorgan Chase & Co.'s worldwide corporate trust business on October 1, 2006. Pursuant to a purchase and assumption agreement dated April 7, 2006, The Bank of NY Co. will acquire JPMorgan Chase & Co.'s corporate trust business and JPMorgan Chase & Co. will acquire the regional and middle-market banking business owned by The Bank of NY Co. through an exchange of such assets and cash (the Acquisition). JPMorgan Chase & Co.'s corporate trust business provides trust, agency, execution, master servicing, custodial, depository, analytics, defeasance, and other related services in more than 40 locations worldwide to the international, structured finance, municipal and corporate debt markets with respect to issues currently totaling $5 trillion. In the transaction, all of the stock of Colson is among the assets being acquired by The Bank of NY Co. The stock of Colson is only one of JPMorgan Chase & Co.'s trust business assets being acquired by The Bank of NY Co. through the Acquisition.

Effective as of the Acquisition, Colson will become a wholly owned subsidiary of The Bank of NY Co. Since The Bank of NY is also a wholly owned subsidiary of The Bank of NY Co., Colson and The Bank of NY will become ''brother-sister'' corporate affiliates. Colson will keep its current name, Colson Services Corp., and will conduct its business operations after the Acquisition in the same manner as it did before. Colson will operate as a separate subsidiary under The Bank of NY Co. As described above, The Bank of NY is trustee and Colson serves as central servicing agent for the 504 Program securitizations granted relief in PTE 2001–32. Currently, the Trustee (The Bank of NY) and the Central Servicing Agent (Colson) are unaffiliated. Section II. D. of PTE 2001–32 prohibits the Trustee from being an affiliate of any other member of the Restricted Group. Under Section III. M., the Central Servicing Agent is a member of the Restricted Group.

10. In the absence of an amendment to PTE 2001–32, a violation of section 406(a)(1)(A) of the Act could result from the sale of participation certificates by the underwriter to a plan. A violation of section 406(b) of the Act could occur in connection with the management or operation of the Trust. In addition, there may be extensions of credit, provisions of services to the Trust and payment of fees by the Trust that violate other provisions of section 406. The Applicant is seeking the requested relief since PTE 2001–32 would no longer apply to any securitization transactions occurring on or after the Acquisition on October 1, 2006, unless The Bank of NY or Colson or both of these parties were to be replaced or PTE 2001–32 is amended to permit this affiliation.

The Applicant believes that, if the amendment is not granted by the Department, it will be extremely difficult and disruptive to the administration of the 504 Program securitizations for the SBA to have to replace one or both of The Bank of NY and/or Colson. In addition, plans that purchased participation certificates offered pursuant to these securitizations may be forced to dispose of their certificates if the amendment is not granted and/or will not be able to invest in such SBA guaranteed certificates in the future. The Applicant requests the amendment because it asserts that the prohibition against the Central Servicing Agent and the Trustee being related to one another in PTE 2001–32 is not necessary to protect the interests of employee benefit plans investing in the certificates because only the SBA, and not the Trustee, has the power to remove, or to take any remedial action against, the Central Servicing Agent, and the interests of the Trustee and the Central Servicing Agent are not adverse to one another.

11. The Applicant notes that permitting the Trustee and the Central Servicing Agent to be affiliated does not adversely impact in any way the interests of employee benefit plans investing in participation certificates offered under the 504 Program securitizations because: (i) The performance of their respective responsibilities and obligations in connection with the securitizations does not place them in any situation where their interests are adverse to one another and so will not create any conflict of interest; (ii) only the SBA, not the Trustee, has the authority to hire or terminate the Central Servicing Agent; (iii) if the Central Servicing Agent fails to perform its duties, only the SBA, not the Trustee, can take remedial action against the Central Servicing Agent; and (iv) the only parties to the 1986 Trust Agreement are the SBA, DCFC and the Trustee, and the only parties to the master servicing agreement are the SBA and the Central Servicing Agent. The Applicant asserts that there is no privity of contract between the Trustee and the Central Servicing Agent, as the Trustee is not a signatory to the master servicing agreement and the Central Servicing Agent is not a party to the 1986 Trust Agreement.

More specifically, the principal duties of the Trustee are to: (i) Pay the certificateholders from the funds the Central Servicing Agent deposits into the Trust (representing debenture or SBA guarantee payments); (ii) send financial reports to the certificateholders; (iii) make certain information regarding the debenture pool available; and (iv) issue, register, hold and/or transfer the certificates and debentures for the benefit of the SBA and/or the certificateholders. The Applicant states that while the 1986 Trust Agreement recites some of the duties and obligations of the Central Servicing Agent including to (i) deposit into the Trust the payments from such debentures and SBA guarantee payments, (ii) create certain funding accounts, and (iii) notify the SBA if there is an acceleration event and calculate the amounts due under the debentures in such case, these recitations do not create the legal obligation of the Central Servicing Agent to perform these functions or impose a legal obligation upon the Trustee to require the Central Servicing Agent to perform these functions. The Applicant asserts that such functions of the Central Servicing Agent are described in order to put the duties of the Trustee in context of these complicated transactions. Instead, the obligations of the Central Servicing Agent to perform these functions are legally created under the master servicing agreement, not the 1986 Trust Agreement, and these obligations are enforceable by the SBA.

As noted above, the Central Servicing Agent is neither a party, nor a signatory, to the 1986 Trust Agreement. No conflicts arise between the two parties in the performance of their duties. The Central Servicing Agent collects the payments from the debentures, establishes collection accounts to do this outside the Trust for this purpose, decides if the amounts received are sufficient and to what extent, and if they are not, deals with the SBA in collecting upon the guarantee. The Applicant asserts that the Trustee has no accountability with respect to these matters and, that this fact is stated in the 1986 Trust Agreement at section 8.03. The Applicant concludes that the Trustee's only responsibility that in any way intersects with the Central Servicing Agent is to receive funds into the Trust, and pay such funds from the Trust to certificateholders and that there cannot be any adversity between the parties that would prevent them from being affiliated since the Trustee has no

responsibility for the sufficiency of the amounts and no authority over whether the Central Servicing Agent performs its duties.

12. The Applicant states that the master servicing agreement is the legal document governing the obligations of the Central Servicing Agent as described above and in the original application. Under the terms of the master servicing agreement between the SBA and the Central Servicing Agent, the SBA, who is the signatory to the contract, not the Trustee, has the power to both hire and terminate the Central Servicing Agent and to monitor and enforce all of its duties and obligations under the master servicing agreement in the case of a default on the part of the Central Servicing Agent. SBA and its authorized representatives have the right of access and inspection of Colson's facilities and records relating to the operations of the 504 Program. The Central Servicing Agent may forfeit its right to its fees if, in the determination of SBA, it has not submitted required reports or performed required services, unless the failure is beyond its control and without its fault. SBA may terminate the contract for a default by the Central Servicing Agent, including the Central Servicing Agent's failure to perform its obligations in a timely manner, as well as the Central Servicing Agent's insolvency or the filing of a petition in bankruptcy by or against Central Servicing Agent if the petition is not dismissed or withdrawn within 90 days. The Applicant also wishes to note that section H–17 of the master servicing agreement provides that the Central Servicing Agent is ineligible to bid on the 504 Program Trustee contract. While this provision is somewhat ambiguous in its precise intent, the SBA and the other parties have chosen to interpret it narrowly and are in the process of having it amended prior to the date of the Acquisition so that it would not be an impediment to the Central Servicing Agent and the Trustee being affiliates.

13. The Applicant represents that the relationships between the four relevant parties to the 504 Program securitization transactions (the SBA, DCFC, the Trustee and the Central Servicing Agent) are distinguishable from that present in traditional securitizations of mortgage-backed securities covered by the ''Underwriter Exemptions'' that have been granted heretofore as amended and restated under PTE 2002–41, 67 FR 54,487 (August 22, 2002).[7] Specifically, in 504 Program securitizations, the duties of the Central Servicing Agent and the Trustee do not create any conflicts of interest; the two parties are not in privity of contract with one another, in contrast to traditional securitizations where such conflicts and privity of contract could arise between the trustee and the servicers. In the mortgage-backed and asset-backed securitizations covered by the Underwriter Exemptions, the master servicer, the depositor/sponsor and the trustee enter into a three party pooling and servicing agreement governing their duties with respect to the operation of the trust and its assets. The trustee, as the signatory of all of the documents and instruments held by the issuer on behalf of certificateholders, has the authority and responsibility to enforce all of their rights against the master servicer. In addition, the trustee would become the master servicer in the event of a default by the master servicer. For these reasons it is necessary for the trustee and the master servicer to remain unrelated. The Applicant asserts, however, these circumstances do not exist and are distinguishable from those described with respect to 504 Program securitizations.

14. The Applicant believes that the proposed amendment to PTE 2001–32 would be administratively feasible because it merely allows the existing exemption, as modified, to continue. No further action is required by the Department once the amendment is granted. The Applicant asserts that the amendment to PTE 2001–32 would be in the interest of participants and beneficiaries because all of the protections that the Department has created in the original exemption as well as the protections inherent in the 504 Program will continue to protect participants and beneficiaries and will allow the 504 Program securitizations to continue to operate undisturbed, thus making these continually available to plans. The Applicant believes that the requested amendment would be protective of the rights of the participants and beneficiaries of affected plans because the sale of the certificates will be conducted under all of the safeguards contained in the existing exemption.

The Applicant states that the 504 Program securitizations have operated successfully with the current service providers for many years and that, in this economic environment of ever increasing mergers and acquisitions of corporations in the financial servicing industry, it becomes more and more difficult to find suitable institutions to act as trustees and/or servicers. The Applicant believes that it will be extremely burdensome for the SBA to be required to replace one or both of the Trustee and the Central Servicing Agent in order to find two qualified parties that are unrelated, and arrange for the transition to the new entities, especially given the complex administration of the 504 Program securitizations and the number of outstanding transactions potentially impacted. If the SBA is unable to find suitable replacements, any potential employee benefit plan investors desiring to invest in certificate offerings or secondary market transactions occurring on or after October 1, 2006 would be prohibited from doing so.

15. In conclusion, the Applicant notes that the original application for PTE 2001–32 indicated that the participation certificates issued under the 504 Program securitizations are an extremely high-quality investment, benefit from an SBA guarantee, and are backed by the full faith and credit of the United States, on both the certificates and on the debentures that constitute the collateral for the certificates. As a result, they present a very attractive investment opportunity for employee benefit plans which have traditionally purchased participation certificates directly or through money managers purchasing on behalf of such plans. The Applicant represents that the availability of PTE 2001–32 creates a wider potential market for the participation certificates thus resulting in better pricing and greater liquidity for the participation certificates, as well as lowering costs to 504 Program borrowers, in furtherance of the policies behind the 504 Program. Without the benefit of the relief granted by PTE 2001–32, the Applicant would be significantly restricted in its ability to sell participant certificates to plans and thus its access to the capital markets would be significantly restricted. Accordingly, the Applicant respectfully seeks administrative relief that amends PTE 2001–32 effective as of October 1, 2006, the date of the Acquisition, to permit the Central Servicing Agent to be affiliated with the Trustee.

[7] The Underwriter Exemptions permit plans to purchase certain securities representing interests in asset- or mortgage-backed investment pools. The securities generally take the form of certificates issued by a trust (the Trust). The Underwriter Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing plan.

Notice to Interested Persons

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register.** All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above. Written comments and requests for a hearing should be received by the Department on or before October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–15789 Filed 9–26–06; 8:45 am]

BILLING CODE 4510–29–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 3, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for U.S. History II, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

2. *Date:* October 11, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for World Studies I, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

3. *Date:* October 17, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Science, Technology, Philosophy, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

4. *Date:* October 19, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Archaeology/Anthropology, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

5. *Date:* October 24, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Music/Dance, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

6. *Date:* October 31, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Linguistics, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

Heather Gottry,

Acting Advisory Committee, Management Officer.

[FR Doc. E6–15883 Filed 9–26–06; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Dates and Time: November 2, 2006; 9 a.m.–5 p.m., November 3, 2006; 9 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Joanne Tornow, Senior Advisor for Strategic Planning, Policy and Analysis, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Tel. No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Joint session with the Education and Human Resources Directorate Planning and Issues Discussion:

- BIO Status and FY 07 Budget.
- NSF Strategic Plan.
- NEON Update.
- Committee of Visitors Reports.

Dated: September 22, 2006.

Joann P. Roskoski,

Executive Officer, Biological Sciences.

[FR Doc. 06–8292 Filed 9–26–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC, Monticello Nuclear Generating Plant; Notice of Availability of the Final Supplement 26 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Monticello Nuclear Generating Plant

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license DPR–22 for an additional 20 years of operation for the Monticello Nuclear Generating Plant (Monticello). Monticello is located on the southern bank of the Mississippi River in the City of Monticello, Wright County, Minnesota, approximately 30 miles northwest of Minneapolis, Minnesota. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 26, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Nuclear Management Company, LLC; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Monticello are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable.

The final Supplement 26 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams/web-based.html.* The accession number for the final Supplement 26 to the GEIS is ML062490078. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* In addition, the Monticello Public Library (220 West 6th Street, Monticello, Minnesota 55362) and the Buffalo Public Library (18 Northwest Lake Boulevard, Buffalo, Minnesota 55313), have agreed to make the final supplement available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer A. Davis, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Ms. Davis may be contacted at 1–800–368–5642, extension 3835 or via e-mail at *jxd10@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of September, 2006.

For the Nuclear Regulatory Commission.

Rani L. Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–15786 Filed 9–26–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meeting

DATE: Weeks of September 25, October 2, 9, 16, 23, 30, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of September 25, 2006

There are no meetings scheduled for the week of September 25, 2006.

Week of October 2, 2006—Tentative

Thursday, October 5, 2006

12:55 p.m.

Affirmation Session (Public Meeting) (Tentative).

a. Entergy Nuclear Operations, Inc., (Pilgrim Nuclear Power Station), Massachusetts Attorney General's Petition for Backfit Order (Tentative).

Week of October 9, 2006—Tentative

There are no meetings scheduled for the week of October 9, 2006.

Week of October 16, 2006—Tentative

Monday, October 16, 2006

9:30 a.m.

Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (morning session).

1:30 p.m.

Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (afternoon session), (Public Meetings) (Contact: Dave Matthews, 301–415–1199).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov.*

Friday, October 20, 2006

2:30 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 23, 2006—Tentative

Wednesday, October 25, 2006

9:30 a.m.

Briefing on Institutionalization and Integration of Agency Lessons Learned (Public Meeting) (Contact: John Lamb, 301–415–1727).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Briefing on Resolution of GSI–191, Assessment of Debris Accumulation on PWR Sump Performance (Public Meeting) (Contact: Michael L. Scott, 301–415–0565).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 30, 2006—Tentative

There are no meetings scheduled for the week of October 30, 2006.

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, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@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.*

Dated: September 21, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–8326 Filed 9–25–06; 9:57 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54476; File No. SR–BSE–2006–31]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Removing Its Short Sale Price Test Rule

September 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 self-regulatory organization. BSE has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes amending its rules related to trading in Nasdaq securities to remove the short sale price test rule, or ''bid test'' rule, applicable to Nasdaq Global Market securities and Nasdaq Capital Market securities (''Nasdaq Securities'') traded on facilities of the BSE. That rule is presently set forth in Chapter XXXV, Section 26 of the BSE Rules.

In addition to removing the BSE ''bid test'' rule for short sales of Nasdaq Securities from the BSE Rules, the proposed amendment is intended to clarify that all Nasdaq Securities traded on BSE facilities will be exempt from the requirements of any short sale price test applicable to Nasdaq Securities, including, but not limited to, the short sale price test set forth in Rule 10a–1 of the Act.

Regulation SHO Rule 202T established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests (the ''Pilot'').[4] The Pilot is designed to assist the Commission in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation. To determine whether additional rulemaking is necessary, Commission staff will evaluate the results of the Pilot. After completion of the Pilot Program or at such other time if the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors, the BSE will amend its rules accordingly, if necessary. The text of the proposed rule change is available from the principal office of the Exchange and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

On or about August 1, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') became a national securities exchange. As a result of Nasdaq becoming a national securities exchange, Nasdaq Securities became exchange listed securities subject to the short sale ''tick test'' provisions of Rule 10a–1 under the Act, which governs short sales of any security registered on, or admitted to, unlisted trading privileges on a national securities exchange if such transactions are made pursuant to an effective transaction reporting plan as defined in Rule 600 of Regulation NMS.[5]

Both the Chicago Stock Exchange, Inc. and Nasdaq requested, and have been granted, an exemption from the ''tick test'' provisions of Rule 10a–1 for Nasdaq listed securities while the Regulation SHO Pilot Program (the ''Pilot Program'') remains pending or until such other time as the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors.[6] The BSE intends to rely upon the exemption from the ''tick test'' provisions of Rule 10a–1 set forth in the Commission's July 20, 2006 letter to the Chicago Stock Exchange, Inc. As such, transactions in Nasdaq Securities on the BSE will be exempt from the ''tick test'' provisions of Rule 10a–1 just as transactions in Nasdaq Securities on the Chicago Stock Exchange, Inc. are exempt. The BSE will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004).

[5] *See* the July 20, 2006 letter from James Brigagliano, Acting Associate Director, Securities and Exchange Commission, Division of Market Regulation to David C. Whitcomb, Jr., at the Chicago Stock Exchange, Inc.

[6] *See id.*

not apply a ''tick test'' for Nasdaq Securities until the Pilot Program is completed or the Commission directs otherwise.

Even though the BSE will not be applying the ''tick test'' to Nasdaq Securities traded on the BSE, the BSE does have a short sale price test rule that requires Nasdaq Securities traded by specialists be subject to a ''bid test.'' [7] The BSE ''bid test'' rule is presently set forth in Chapter XXXV, Section 26 of the BSE Rules and states, in relevant part, that ''No specialist shall effect a short sale for the account of a customer or for his own account in a Nasdaq security at or below the current best (inside) bid when the current best (inside) bid is below the preceding best (inside) bid in the security.'' This proposed amendment is intended to remove the short sale ''bid test'' rule applicable to Nasdaq Securities traded by specialists on the BSE. This proposed amendment would allow short sales of Nasdaq Securities traded by specialists on the BSE without a short sale price test rule until December 31, 2006, after which the BSE will be trading Nasdaq Securities solely on its fully electronic Boston Equities Exchange (''BeX''). As of January 1, 2007 there will no longer be any specialist traded stocks on the BSE or any of its facilities. As such, BeX traded securities are not subject to Chapter XXXV, Section 26 of the BSE Rules because they are not traded by specialists.

The BSE has not traded a Nasdaq security on the Exchange since or about September of 2004. BSE began receiving nominal specialist-traded Nasdaq crossing business in August 2006. In August, BSE received one cross transaction. BSE expects that the specialist-traded Nasdaq crossing business, which will conclude when BSE begins trading Nasdaq securities on the fully electronic BeX on January 1, 2007, will continue to be a nominal amount in overall Nasdaq security trading volume and should not have any material effect on the Pilot. The BSE believes if it did not remove its current short sale ''bid test'' rule it would be at a competitive disadvantage to other regional market centers.

2. Basis

BSE states that the proposed amendment is designed to prevent the BSE from being at a competitive disadvantage to other regional market centers that may be able to attract order flow as a result of their not having any short sale price test applicable to Nasdaq Securities until completion of the Pilot Program or until such other time as the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors. Except for some nominal Nasdaq crossing business that began in August 2006 and will conclude on January 1, 2007, BSE has not traded Nasdaq securities since September 2004. In addition, the proposed amendment will delete a rule that will be rendered obsolete on January 1, 2007, when BSE begins trading Nasdaq securities on the BeX on a fully electronic basis without specialists. As such, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Act.

(b) Because the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules.sro.shtml;* or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–BSE–2006–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–31. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All comments received will be posted without change; the Commission does

[7] Prior to Nasdaq becoming a national securities, NASD's short sale ''bid test'' Rule 3350, now Rule 5100, was not applicable to a National Securities Exchange trading Nasdaq securities on an unlisted trading privileges basis. Therefore there was no requirement for the BSE to have a short sale ''bid test'' rule for Nasdaq securities.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–BSE–2006–31 and should be submitted on or before October 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15793 Filed 9–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–54475; File No. SR–CBOE–2005–103)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend CBOE Rules Relating to the Electronic Designated Primary Market Maker Program

September 20, 2006.

I. Introduction

On December 5, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend CBOE rules relating to the Electronic Designated Primary Market Maker Program (''e-DPM Program''). On August 11, 2006, CBOE amended the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 18, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange's e-DPM Program allows e-DPMs to operate remotely as competing DPMs by entering bids and offers electronically from locations other than the trading floor. Exchange rules provide that the Exchange will determine which option classes to include in the e-DPM Program and, accordingly, which classes to allocate to each respective e-DPM. The proposed rule change would give the Exchange the corresponding authority to remove any e-DPM option class from the e-DPM Program if certain factors no longer warranted the continued inclusion of that option class in the e-DPM Program. The factors used in making this determination would relate to the option class itself and would include only the following: (i) Market share; (ii) number of exchanges trading the product; (iii) average daily trading volume; and (iv) liquidity in the product. The Exchange would consider any one or all of these factors in determining whether to remove an option class from the e-DPM Program. Persons who are aggrieved by the removal of an option class from the e-DPM Program would be permitted to appeal the decision in accordance with the Exchange's standard procedures on review of Exchange actions, as set forth in Chapter XIX of the Exchange's rules.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,[7] in that it provides a fair procedure for the limitation by the Exchange of any person with respect to access to services offered by the Exchange.

The proposed rule change permits the Exchange to remove option classes from the e-DPM Program only if certain factors no longer warrant the continued inclusion of that class in the program. The Commission notes that the factors to be considered by the Exchange (*i.e.*, market share, number of exchanges trading the product, trading volume, and liquidity) are objective and would limit the Exchange's ability to act in this area. The proposed factors to be considered by the Exchange in determining whether to remove an option class from the e-DPM Program, coupled with the right to appeal the Exchange's determination, should help to protect persons from an unfair limitation of access to services offered by the Exchange, while permitting the Exchange to further the competitive goals of the e-DPM Program. Accordingly, the Commission believes that the amended proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2005–103), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15794 Filed 9–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54477; File No. SR–NASDAQ–2006–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Practice of Using a Fifth Character Identifier With the Symbol of Foreign Securities

September 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original proposal in its entirety.

[4] *See* Securities Exchange Act Release No. 54311 (August 11, 2006), 71 FR 47834.

[5] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change to clarify the non-applicability of the record-keeping fee in Nasdaq Rule 4510(e) and Nasdaq Rule 4520(d) when a non-U.S. issuer requests to eliminate the fifth character identifier affixed to the symbol of its securities.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to 1999, Nasdaq required an ''F'' or ''Y'' be affixed to the symbol of all non-U.S. securities and American Depositary Receipts that traded on the Nasdaq Stock Market. In 1999, Nasdaq ceased this practice for new listings and allowed existing non-U.S. listed companies to remove the fifth character identifier upon request.[6] For those non-U.S. issuers that have not so requested, Nasdaq continues to include the fifth character identifier on the symbol of their securities. Nasdaq is making this filing to clarify that the record-keeping fee in Rule 4510(e) and Rule 4520(d) is not applicable to a non-U.S. issuer that requests that Nasdaq eliminate the fifth character identifier.

The $2,500 record-keeping fee set forth in Nasdaq Rule 4510(e) and Nasdaq Rule 4520(d) is used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a voluntary change in trading symbol. However, Nasdaq notes that these non-U.S. issuers did not choose to have the fifth character identifier, as before 1999 it was mandatory. Further, these issuers are not requesting any change to their ''root'' four letter symbol. Accordingly, Nasdaq believes that these changes should not be treated as a voluntary symbol change and, therefore, it is inappropriate to charge the $2,500 record-keeping fee when a non-U.S. issuer drops the fifth character identifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] and subparagraph (f)(1) of Rule 19b–4 thereunder[10] in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. As such, this proposed rule change is effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–034 and should be submitted on or before October 18, 2006.

[5] This proposal does not require changes to Nasdaq's rule text. Telephone conversation between Jonathan F. Cayne, Associate General Counsel, The Nasdaq Stock Market, Inc., and Nataliya Cowen, Special Counsel, Division of Market Regulation, Commission, on September 19, 2006.

[6] *See* Securities Exchange Act Release No. 41076 (Feb. 19, 1999); 64 FR 9552 (Feb. 26, 1999).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15799 Filed 9–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54479; File No. SR–NASD–2006–108]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction With the National Stock Exchange

September 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt rules relating to a new Trade Reporting Facility (the ''NASD/NSX TRF'') to be established by NASD, in conjunction with the National Stock Exchange (''NSX''), that would provide members another mechanism for reporting trades in Nasdaq-listed equity securities effected otherwise than on an exchange. The proposed NASD/NSX TRF structure and rules are substantially similar to the Trade Reporting Facility (''TRF'') established by NASD and Nasdaq Stock Market, Inc. (the ''NASD/Nasdaq TRF'') and rules relating thereto, which were approved by the Commission pursuant to proposed rule change SR–NASD–2005–087.[3] Pursuant to the proposed rule change, NASD is also proposing: (1) Amendments to certain NASD rules to reflect the operation of more than one Trade Reporting Facility established by NASD; and (2) new NASD Rule 5140 relating to the use of multiple Market Participant Symbols by members reporting trades to a Trade Reporting Facility established by NASD.

The text of the proposed rule change is available on NASD's Web site at (*http://www.nasd.com*), at the principal office of the NASD, at the Commission's Public Reference Room, and the Commission's Web site at (*http://www.sec.gov*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2006, the Commission approved SR–NASD–2005–087.[4] Among other things, the Approval Order proposed: (1) Amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting trades effected otherwise than on an exchange to the NASD/Nasdaq TRF. Pursuant to SR–NASD–2005–087, NASD proposed the NASD Rule 4000 Series (The Trade Reporting Facility) and the NASD Rule 6100 Series (Clearing and Comparison Rules), which generally apply to trade reporting and clearing and comparison services via the NASD/Nasdaq TRF.

NASD/NSX Trade Reporting Facility

The NASD proposes to establish a new NASD/NSX TRF on substantially the same terms as the NASD/Nasdaq TRF.[5] The NASD/NSX TRF will provide members another mechanism, which has been developed by NSX, for reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange.[6] Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/NSX TRF with the appropriate information and modifiers. The NASD/NSX TRF will report the trades to the appropriate exclusive securities information processor (''SIP'').[7] As with trades reported to the NASD/Nasdaq TRF, NASD/NSX TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the NSX. In addition, the NASD/NSX TRF will provide NASD with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the NASD/NSX TRF may also provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation (''NSCC'').

Like the NASD/Nasdaq TRF, the NASD/NSX TRF will be a facility of NASD, subject to regulation by NASD and NASD's registration as a national securities association. It will not be a service ''for the purpose of effecting or reporting a transaction'' on the NSX; rather, it will be a service for the purpose of reporting over-the-counter transactions in Nasdaq-listed equity securities to NASD.[8] Thus, members that meet all applicable requirements will now have the option of reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange to the NASD/NSX TRF,

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR–NASD–2005–087) (''Approval Order''). SR–NASD–2005–087 became effective upon the date on which The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'') commenced operation as a national securities exchange for Nasdaq-listed securities, which was August 1, 2006.

[4] *Id.*

[5] In response to comments submitted to the Commission in connection with the Approval Order, NASD indicated that it was prepared to implement a TRF with any exchange based on whatever technology the exchange has available to it. *See* Letter to Honorable Christopher Cox, Chairman, Commission, dated May 2, 2006 from Robert Glauber, Chairman and Chief Executive Officer, NASD.

As the Commission noted in its Approval Order, the Act does not prohibit NASD from establishing different facilities for purposes of fulfilling its regulatory obligations. *See* Approval Order.

[6] NASD will submit a second proposed rule change relating to reporting to the NASD/NSX TRF of transactions in all exchange-listed securities executed otherwise than on an exchange.

[7] The NASD/NSX TRF will have controls in place to ensure that transactions that are reported to the NASD/NSX TRF, but are priced significantly away from the current market, will not be submitted to the SIP. This is consistent with current practice, which is designed to preserve the integrity of the tape; today, such trades are not submitted to the SIP by the ADF or the NASD/Nasdaq TRF.

[8] See Approval Order.

NASD's Alternative Display Facility (''ADF'') or the NASD/Nasdaq TRF.[9]

NSX has developed the system that participants will use to access the NASD/NSX TRF. Technical Specifications to connect to the NASD/NSX TRF system are available upon request to NASD and will be accessible through the NASD's Web site at a later date.

NASD/NSX TRF Limited Liability Company Agreement

NASD and NSX propose to enter into a Limited Liability Company Agreement of NASD/NSX Trade Reporting Facility LLC (''the NASD/NSX LLC Agreement''). The terms of the NASD/NSX LLC Agreement are substantially similar to the terms of the LLC agreement that NASD entered with Nasdaq Stock Market Inc. (''Nasdaq'').

NASD will have sole regulatory responsibility for the NASD/NSX TRF, while NSX agrees to pay the cost of regulation and will provide systems to enable members to report trades to the NASD/NSX TRF. NSX will be entitled to the profits and losses, if any, derived from the operation of the NASD/NSX TRF.

NASD, the SRO Member under the NASD/NSX LLC Agreement, will perform SRO Responsibilities including, but not limited to:

(1) Adoption, amendment and interpretation of policies arising out of and regarding any aspect of the operation of the facility considered material by the SRO Member, or regarding the meaning, administration, or enforcement of an existing rule of the SRO Member, including any generally applicable exemption from such a rule;

(2) Approval of rule filings of the SRO Member prior to filing with the Commission;

(3) Regulation of the NASD/NSX TRF's activities of or relating to SRO Responsibilities, including the right to review and approve, in the SRO Member's sole reasonable discretion, the regulatory budget for the NASD/NSX TRF;

(4) Securities regulation and any other matter implicating SRO Responsibilities; and

(5) Real-time market surveillance.[10]

NSX, the ''Business Member'' under the NASD/NSX LLC Agreement, will be primarily responsible for the management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Under Section 9(d) of the NASD/NSX LLC Agreement, each Member agrees to comply with the Federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority and the provisions of the NASD/NSX LLC Agreement.

The NASD/NSX TRF will be managed by or under the direction of a Board of Directors to be established by the parties. NASD will have the right to designate at least one Director, the SRO Member Director, who may be a member of NASD's Board of Governors or an officer or employee of NASD designated by the NASD Board of Governors. The SRO Member Director will have veto power over all major actions of the NASD/NSX LLC Board. Major Actions are defined in Section 10(e) of the NASD/NSX LLC Agreement to include:

(1) Approving pricing decisions that are subject to the SEC filing process;

(2) Approving contracts between the NASD/NSX TRF and the Business Member, any of its affiliates, directors, officers or employees;

(3) Approving Director compensation;

(4) Selling, licensing, leasing or otherwise transferring material assets used in the operation of the NASD/NSX TRF's business outside of the ordinary course of business with an aggregate value in excess of $3 million;

(5) Approving or undertaking a merger, consolidation or reorganization of the NASD/NSX TRF with any other entity;

(6) Entering into any partnership, joint venture or other similar joint business undertaking;

(7) Making any fundamental change in the market structure of the NASD/NSX TRF from that contemplated by the Members as of the date of the NASD/NSX LLC Agreement;

(8) To the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 21 of the NASD/NSX LLC Agreement;

(9) Conversion of the NASD/NSX TRF from a Delaware limited liability company into any other type of entity;

(10) Expansion of or modification to the business which results in the NASD/NSX TRF engaging in material business unrelated to the business of Non-System Trading;[11]

(11) Changing the number of Directors on or composition of the Board; and

(12) Adopting or amending policies regarding access and credit matters affecting the NASD/NSX TRF.

In addition, each Director agrees to comply with the Federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.

The principal difference between the NASD/NSX LLC Agreement and the LLC Agreement NASD entered with Nasdaq relates to termination. The initial term of the agreement is three years. During that time, until the NASD/NSX TRF reaches ''Substantial Trade Volume'' (defined as 250,000 trades or more per day for three consecutive months), NSX may terminate the arrangement for convenience. After the NASD/NSX TRF reaches Substantial Trade Volume, either Member may terminate NASD/NSX Trade Reporting Facility LLC by providing to the other Member prior written notice of at least one year (as in the case with Nasdaq). Neither Member may deliver such notice before the second anniversary of the effective date of the NASD/NSX LLC Agreement. In addition, at any time, NASD may terminate in the event its status or reputation as a preeminent SRO is called into jeopardy by the actions of NSX or the NASD/NSX TRF. In the event of termination of the NASD/NSX TRF arrangement, NASD will be able to fulfill all of its regulatory obligations with respect to over-the-counter trade reporting through its other facilities, including the NASD/Nasdaq TRF and ADF.

NASD/NSX Trade Reporting Facility Rules

Members will report trades in Nasdaq-listed equity securities effected otherwise than on an exchange to the NASD/NSX TRF pursuant to NASD rules. As such, NASD is proposing rules relating to the use and operation of the NASD/NSX TRF that are substantially similar to the rules approved by the Commission relating to the NASD/

[9] NASD will have an integrated audit trail of NASD/Nasdaq TRF, NASD/NSX TRF and ADF transactions and will have integrated surveillance capabilities. NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by the end of the fourth quarter of 2006. Prior to that time, NASD staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.

[10] The SRO Member will perform real-time market surveillance related to trades reported to the NASD/NSX TRF. However, because the NASD/NSX TRF via the Business Member will submit transaction information directly to the SIP, the NASD/NSX TRF via the Business Member also will establish and implement controls to ensure that transactions that are reported to the NASD/NSX TRF, but are priced significantly away from the current market, will not be submitted to the SIP. *See supra* note 7.

[11] Pursuant to the NASD/NSX LLC Agreement, ''Non-System Trading'' means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to Rule 601 of Regulation NMS under the Act.

Nasdaq TRF.[12] Specifically, NASD is proposing the new NASD Rule 4000C and NASD Rule 6100C Series, which track the NASD Rule 4000 and NASD Rule 6100 Series adopted pursuant to the Approval Order.

Similar to the NASD/Nasdaq TRF rules, to become a participant in the NASD/NSX TRF, an NASD member must meet minimum requirements as outlined in NASD Rule 6120C. These include execution of, and continuing compliance with, a Participant Application Agreement; membership in, or maintenance of an effective clearing arrangement with a participant of a clearing agency registered pursuant to the Act; and the acceptance and settlement of each trade that the NASD/NSX TRF identifies as having been effected by the participant.

Members that report trades to the NASD/NSX TRF must include the details of the trade, as required by the proposed rules. Participants must also include the unique order identifier assigned for purposes of reporting to the Order Audit Trail System, thus enabling NASD to match the order against the trade that was reported to the tape by the NASD/NSX TRF.

As with the NASD/Nasdaq TRF, participants may enter into ''give-up'' arrangements whereby one member reports to the NASD/NSX TRF on behalf of another member. Participants must complete and submit to the NASD/NSX TRF the appropriate documentation reflecting the arrangement. Proposed NASD Rule 4632C(g) provides that the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the NASD/NSX TRF are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.[13]

In addition, participants will be able to submit ''riskless principal'' transactions[14] to the NASD/NSX TRF. Similar to the NASD/Nasdaq TRF, the non-media portion of a riskless principal transaction will not be reported to the tape, but will be submitted real-time to NASD for regulatory purposes and, at the option of the user, to NSCC. Proposed NASD Rule 4632C(d)(3)(B)[15] would clarify that where the media leg of the riskless principal transaction is reported to the NASD/NSX TRF, the second, non-media leg must also be reported to the NASD/NSX TRF. However, where the media leg of the riskless principal transaction was previously reported by an exchange, the member would be permitted, but not required, to report the second, non-media leg to the NASD/NSX TRF. Members that choose to report such transactions to the NASD/NSX TRF must include all data elements required under the rules. Members should note, however, that transactions reported by an exchange should not be reported to NASD/NSX TRF for media purposes, as that would result in double reporting of the same transaction.[16]

Finally, NASD will have the authority to halt trading otherwise than on an exchange reported to the NASD/NSX TRF. The scope of NASD's authority under proposed NASD Rule 4633C is identical to its authority to halt trading reported to the NASD/Nasdaq TRF and the ADF.

As described below, the proposed rules differ from the NASD/Nasdaq TRF rules in certain respects. Currently, NASD Rules 4100 and 4200(a)(2) of the NASD/Nasdaq TRF rules define ''designated securities'' as all Nasdaq National Market (now Nasdaq Global Market) and Nasdaq Capital Market securities and convertible bonds listed on Nasdaq.[17] As defined in proposed NASD Rules 4100C and 4200C(a)(2), ''designated securities'' for purposes of reporting trades to the NASD/NSX TRF means ''all equity securities listed on the Nasdaq Stock Market LLC.'' The proposed definition is intended to capture the same universe of Nasdaq-listed securities (except for convertible bonds) in current NASD Rules 4100 and 4200(a)(2), without specifying the various Nasdaq tiers.

Second, pursuant to proposed NASD Rule 6120C, only members of NASD may use the NASD/NSX TRF. Non-members will not be permitted to submit trade reports to the NASD/NSX TRF. Under very limited circumstances, certain Non-Member Clearing Organizations are granted access to and participation in the NASD/Nasdaq TRF.

Third, pursuant to proposed NASD Rule 6140C, all trades submitted to the NASD/NSX TRF must be locked-in prior to entry into the System. The NASD/NSX TRF will have no trade comparison functionality. Thus, there are no proposed rules relating to trade matching, trade acceptance or aggregate volume matching. Similarly, there will be no ''Browse'' function, meaning that participants will not be able to review or query for trades in the NASD/NSX TRF identifying the participant as a party to the transaction.

Fourth, on the first day of operation, the NASD/NSX TRF will not be able to support trade reporting for certain transactions. Specifically, transactions executed outside of normal market hours cannot be reported to the NASD/NSX TRF on an ''as/of'' or next day (T+1) basis, pursuant to NASD Rule 4632C(a)(2). In addition, the NASD/NSX TRF will not support the .W or .PRP modifiers and therefore proposed NASD Rule 4632C(a)(7) provides that Stop Stock Transactions (as such term is defined in NASD Rule 4200C), transactions at prices based on average-weighting or other special pricing formulae, and transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time cannot be reported to the NASD/NSX TRF. Thus, proposed NASD Rules 4632C(a)(2) and (7) expressly require members to report such trades to NASD via an alternative electronic mechanism.[18]

Similarly, proposed NASD Rule 4632C(a)(3) provides that participants

[12] *See* Approval Order.

[13] As noted above, NASD/Nasdaq TRF participants may enter into ''give-up'' arrangements; however, the NASD/Nasdaq TRF rules currently do not contain a provision similar to proposed NASD Rule 4632C(g). NASD has submitted a proposed rule change to amend the NASD/Nasdaq TRF rules to include a provision that is identical to proposed NASD Rule 4632C(g). *See* Securities Exchange Act Release No. 54451 (September 15, 2006) (SR–NASD–2006–104) (Notice).

[14] A riskless principal transaction is a transaction in which a member, after having received a customer order, executes an offsetting transaction, as principal, with another customer or broker-dealer to fill that customer order and both transactions are executed at the same price.

[15] Proposed NASD Rule 4632C(d)(3)(B) mirrors recently proposed amendments to NASD Rule 4632(d)(3)(B) of the NASD/Nasdaq TRF rules. *See* Securities Exchange Act Release No. 54451 (September 15, 2006) (SR–NASD–2006–104) (Notice).

[16] Proposed NASD Rule 4632C(e)(6) provides that transactions reported on or through an exchange shall not be reported to the NASD/NSX TRF for purposes of publication. This proposed rule mirrors NASD Rule 4632(e)(6) of the NASD/Nasdaq TRF rules. *See* Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087); 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (File No. SR–NASD–2006–055); and 54318 (August 15, 2006), 71 FR 48959 (August 22, 2006) (File No. SR–NASD–2006–098).

[17] On September 5, 2006, NASD filed a proposed rule change that proposes, among other things, to amend the definition of ''designated securities'' in NASD Rules 4100 and 4200(a)(2) to apply to all NMS stocks as defined in NASD Rule 600(b)(47) of Regulation NMS under the Act. *See* Securities Exchange Act Release No. 54451 (September 15, 2006) (SR–NASD–2006–104) (Notice). NASD intends to propose a similar amendment to the definition of ''designated securities'' in proposed NASD Rules 4100C and 4200C(a)(2) in a separate rule filing.

[18] The NASD/NSX TRF is intended to ultimately have much of the same functionality that will be provided by the NASD/Nasdaq TRF. When and if such functionality is developed, NASD will file a proposed rule change to amend the NASD/NSX TRF trade reporting rules accordingly.

must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD for which electronic submission to the NASD/NSX TRF is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism such as the ADF or another Trade Reporting Facility (for example, where the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.

Fifth, members will not be permitted to aggregate individual executions of orders in a security at the same price into a single transaction report submitted to the NASD/NSX TRF. Thus, the proposed rule change does not contain a counterpart to NASD Rule 4632(f) or NASD Rule 6100(e) permitting ''bunched'' trades to be reported to the NASD/Nasdaq TRF.

Finally, cancellation of any trade that has been submitted to the NASD/NSX TRF must be reported in accordance with proposed NASD Rule 4632C(f). For trades that are cancelled after the day of execution of the trade or trade cancellations that are not reported on the day of execution of the trade, members must contact Trade Reporting Facility Operations to report the trade cancellation.

NASD notes that the proposed rule change does not include any proposed rules relating to fees, assessments and credits specifically related to the NASD/NSX TRF. Fees, assessments and credits, if any, with respect to the NASD/NSX TRF will be the subject of a future rule filing with the SEC.

Proposed Amendments to Certain Existing NASD Rules

Although not explicitly detailed herein, it is important to note that all other NASD rules that apply to over-the-counter trading generally will apply to trades reported to the NASD/NSX TRF. However, certain NASD rules must be amended in order to reflect the operation of more than one Trade Reporting Facility.

NASD Rule 5100 (Short Sale Rule), which restricts short selling on a ''downbid,'' will apply to transactions reported to the NASD/NSX TRF. The text of that rule currently provides that, with respect to trades reported to NASD's Alternative Display Facility or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid. NASD is proposing a technical amendment to NASD Rule 5100 to change the reference to ''the Trade Reporting Facility'' to ''a Trade Reporting Facility'' to clarify that the rule applies to trades reported to any Trade Reporting Facility established by NASD. NASD is proposing an identical technical amendment to NASD Interpretive Material (IM)–5100(b) to change the reference to ''the Trade Reporting Facility'' to ''a Trade Reporting Facility.'' NASD believes that the current language is too narrow and may suggest that the rule applies only to trades reported to the NASD/Nasdaq TRF.

In addition, NASD Rule 6120 currently provides that participation in the System [19] is mandatory for members that are participants of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for members that have a clearing arrangement with such a participant, unless a member subscribes to TRACS. NASD is proposing to amend this rule to provide that participation in the System is mandatory for any member that has an obligation to report an over-the-counter transaction to NASD, unless the member has an alternative mechanism pursuant to NASD rules for reporting and clearing such transaction. Thus, for example, participation in the System under NASD Rule 6120 for purposes of reporting trades in Nasdaq-listed equity securities would not be mandatory for a member that is a Participant in the NASD/NSX TRF.

Proposed New Rule Relating to Multiple Market Participant Symbols

NASD is proposing a new rule in the NASD Rule 5000 Series (Trading Otherwise Than On An Exchange) relating to the use of multiple Market Participant Symbols (''MPIDs'') by members using a Trade Reporting Facility established by NASD. Proposed NASD Rule 5140 (Multiple MPIDs for Trade Reporting Facility Participants) would provide that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a Trade Reporting Facility must submit a written request to, and obtain approval from, NASD Operations for such additional MPID(s).

In addition, NASD is proposing new NASD Interpretive Material (IM)–5140 stating that NASD considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) for which the multiple MPIDs will be used. If NASD determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, NASD staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a Trade Reporting Facility. NASD believes that the proposed new rule and interpretive material are necessary in order to consolidate the process of issuing multiple MPIDs with NASD.[20]

NASD will announce the effective date of the proposed rule change no later than 30 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and protect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NASD believes that establishment of the NASD/NSX TRF is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets because it will provide members another mechanism to report

[19] ''System'' is defined in NASD Rule 6110(m) to mean the NASD/Nasdaq Trade Reporting Facility, the trade reporting service of the ITS/CAES System, and the OTC Reporting Facility.

[20] Currently, members that use the NASD/Nasdaq TRF are able to obtain and use multiple MPIDs upon request. NASD notes that NASD/Nasdaq TRF Participants using existing multiple MPIDs will be grandfathered and will not be required to submit a new form to NASD Operations in order to continue using their MPIDs. However, any such Participant wishing to obtain additional MPIDs after implementation of proposed NASD Rule 5140 would need the approval of NASD Operations. To the extent that a Participant is a member of multiple SROs and intends to use the MPID(s) on multiple SRO systems, NASD will work with the other SRO(s) to coordinate the MPID approval process.

[21] 15 U.S.C. 78o–3(b)(6).

transactions in Nasdaq-listed equity securities effected otherwise than on an exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–108 and should be submitted on or before October 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15792 Filed 9–26–06; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to Federal sentencing guidelines effective November 1, 2006; correction.

SUMMARY: On May 1, 2006, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the **Federal Register** on May 15, 2006. See 71 FR 28063. The Commission has made technical and conforming amendments to commentary provisions related to those amendments and has made a correction to the amendatory language of one amendment.

DATES: The Commission has specified an effective date of November 1, 2006, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by the Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary in order to execute correctly the amendments submitted to Congress. This notice sets forth technical and conforming amendments to commentary related to the amendments submitted to Congress on May 1, 2006, that will become effective date on November 1, 2006. This notice also sets forth a correction to amendatory language.

Authority: USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Chair.

1. Amendment

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 7(C) by striking ''§ 2J1.7'' and inserting ''§ 3C1.3''.

The Commentary to § 2K2.1 captioned ''Application Notes'', as amended by Amendment 9 submitted to Congress on May 1, 2006 (71 FR 28069.; USSG App. C (amendment 691)), is further amended in Note 3 by inserting ''*Definition of 'Prohibited Person'.*—'' before ''For purposes''; and in Note 11, as redesignated by Amendment 9 (USSG App. C (amendment 691)), by striking ''Note 8'' and inserting ''Note 7''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in

Note 4 by striking ''(b)(5)'' each place it appears and inserting ''(b)(6)''.

Reason for Amendment: This amendment makes various technical and conforming amendments in order to execute properly amendments submitted to the Congress on May 1, 2006, and that will become effective on November 1, 2006. Specifically, the amendment conforms guideline references in the commentary of §§ 2B1.1 (Theft, Property Destruction, and Fraud), 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), and 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to redesignated guideline provisions and adds a heading to Application Note 3 in § 2K2.1.

2. Correction

In the **Federal Register** published on May 15, 2006 (71 FR 28063), make the following correction: On page 28071, in column 3, correct the second amendatory instruction to read as follows:

Section 2L1.1(c) is amended by striking ''If any person'' through the end of ''Subpart 1'' and inserting the following:

[FR Doc. E6–15782 Filed 9–26–06; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In August 2006, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2007. See 77 FR 44344 (August 4, 2006). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2007, and possibly continuing into the amendment cycle ending May 1, 2008. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2007. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2007.

As so prefaced, the Commission has identified the following priorities:

(1) Implementation of crime legislation enacted during the 109th Congress warranting a Commission response, including (A) the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109–248; (B) the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109–181; (C) the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177; (D) the Trafficking Victims Protection Reauthorization of 2005, Pub. L. 109–164; (E) the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162; (F) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59; and (G) other legislation authorizing statutory penalties, creating new offenses, or pertaining to victims, that requires incorporation into the guidelines;

(2) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States* v. *Booker,* including any appropriate guideline changes in light of the Commission's 2006 report to Congress, *Final Report on the Impact of United States* v. *Booker on Federal Sentencing,* and continuation of its analysis of post-*Booker* data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(3) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(4) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including holding a hearing on this issue and reevaluating the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy;*

(5) Beginning of a guideline simplification effort to develop and consider possible options that might improve the overall effectiveness of the sentencing guidelines;

(6) Continuation of its policy work, in light of the Commission's prior research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History);

(7) Continuation of its policy work to implement 28 U.S.C. 994(t), specifically regarding the development of further commentary to § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons); and

(8) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E6–15783 Filed 9–26–06; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10597 and #10598]

New Mexico Disaster Number NM–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1659–DR), dated 8/30/2006.

Incident: Severe Storms and Flooding.

Incident Period: 7/26/2006 and continuing through 9/18/2006.

DATES: *Effective Date:* 9/18/2006.

Physical Loan Application Deadline Date: 10/30/2006.

EIDL Loan Application Deadline Date: 5/30/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Mexico, dated 8/30/2006, is hereby amended to establish the incident period for this disaster as beginning 7/26/2006 and continuing through 9/18/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–15774 Filed 9–26–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Computer Matching Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of a computer matching program—SBA and the Mississippi Development Authority (MDA).

SUMMARY: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, and the Computer Matching Privacy Act Amendments of 1990, the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public'', the Small Business Administration (SBA) is issuing a public notice of its intent to conduct a computer matching program with MDA which uses a computer information system of SBA. The purpose of the computer matching program is to ensure that there is no duplication of benefits (DOB), as prohibited by the Small Business Act, between SBA disaster loans made to homeowners in Mississippi affected by the 2005 Gulf Coast hurricanes and MDA grants to the same homeowners.

DATES: This matching program is expected to begin October 27, 2006. Any public comment must be received before this expected start date.

ADDRESSES: Any interested party may submit written comments to Small Business Administration, Office of Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: On the matching program: Becky Brantley, Disaster External Affairs Liaison, 202–205–6734; and on the Privacy Act: Lisa Babcock, Chief, Freedom of Information/Privacy Acts Office, 202–401–8203.

SUPPLEMETARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (15 U.S.C. 552a), the SBA and MDA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the computer matching program is to exchange personal data to identify individuals who have been approved for an SBA home disaster loan as a result of the 2005 Gulf Coast hurricanes and who seek to obtain a grant from the MDA for the same loss. Only homeowners whose principal residences are in Harrison, Hancock, Jackson and Pearl River Counties, Mississippi will be eligible to receive MDA grants. Matching the information will prevent a DOB between an SBA disaster loan and an MDA grant to the same homeowner. Section 7(b)(1) of the Small Business Act (15 U.S.C. 636(b)(1)) prohibits SBA, in making physical disaster loans, from duplicating the benefits that recipients of such loans may receive from other sources.

The parties to the agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed to make a decision on whether there is a DOB. The principal alternative to using this matching program would be to manually match the loan applications processed by SBA with the grant applications submitted to the MDA. Manual matching would impose an administrative burden on the agencies and might result in delays in determining eligibility for MDA grants to affected victims of the hurricanes.

A copy of the agreement between SBA and MDA is available on request. Requests should be submitted to the same address listed above for comments.

Reporting of Matching Program

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching Privacy Act Amendments of 1990 (Pub. L. 101–56) (collectively, the Law), and OMB Bulletin 89–22, copies of this notice are being provided to the House Committee on Government Reform and the Senate Committee on Homeland Security and Governmental Affairs, and to OMB.

Authority

The matching program will be conducted pursuant to the Law.

Objectives To Be Met by the Matching Program

The matching program will allow MDA and SBA to share data in order to prevent an applicant for an MDA grant from receiving a DOB with an SBA home disaster loan.

Records To Be Matched

The SBA records involved in the match are home loan applications received by SBA from disaster victims in Harrison, Hancock, Jackson and Pearl River counties in Mississippi as a result of the 2005 Gulf Coast hurricanes. These home loan application records are contained in the SBA Privacy Act System of Records: Disaster Loan Case File—SBA 20, last published at 69 FR 58598.

Period of the Match

The computer matching program will be conducted in accordance with the agreement between SBA and the MDA. The agreement will remain in effect until the last MDA grant award has been processed by MDA or December 31, 2006, whichever is earlier. The agreement may be extended by mutual agreement of the parties. Either SBA or MDA, upon thirty (30) days written notice, may request an extension or may terminate the agreement.

Charles McClam,

Acting Chief Information Officer.

[FR Doc. E6–15775 Filed 9–26–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconference.

DATES: October 18, 2006—2 p.m. to 4 p.m. Eastern Daylight Savings Time.

Ticket to Work and Work Incentives Advisory Panel Conference Call.

Call-in number: 1–888–790–4158.

Pass code: PANEL TELECONFERENCE.

Leader/Host: Berthy De la Rosa-Aponte.

SUPPLEMENTARY INFORMATION:

Type of meeting: On October 18, 2006, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a teleconference. This teleconference meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Act. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a).

The interested public is invited to listen to the teleconference by calling the phone number listed above. Public testimony will be taken from 3:30 p.m. until 4 p.m. Eastern Standard Time. You must be registered to give public comment. Contact information is given at the end of this notice.

Agenda: The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.Telephone contact with Tinya White-Taylor at (202) 358–6430.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*
- To register for the public comment portion of the meeting please contact Tinya White-Taylor by calling (202) 358–6430 or by e-mail to *tinya.white-taylor@ssa.gov.*

Dated: September 19, 2006.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E6–15796 Filed 9–26–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5516]

Bureau of Democracy, Human Rights and Labor; Renewal of Charter of the Advisory Committee on Persons With Disabilities and Request for New Member Applications

SUMMARY: The Charter of the Advisory Committee on Persons with Disabilities was renewed for a second two-year term on June 26, 2006 and applications are being solicited to fill one vacant position on the Committee.

Established on June 23, 2004, and rechartered on June 26, 2006, the Advisory Committee on Persons with Disabilities serves the Secretary and the Administrator in an advisory capacity with respect to the consideration of the interests of persons with disabilities in formulation and implementation of U.S. foreign policy and foreign assistance. The Committee is established under the general authority of the Secretary and the Department of State as set forth in Title 22 of the United States Code, in particular Sections 2656 and 2651a, and in accordance with the Federal Advisory Committee Act, as amended.

The Committee is made up of the Secretary of State, the Administrator of the Agency for International Development and an Executive Director (all ex-officio members); and eight members from outside the United States government. The non-government members of the Committee represent a cross section from not-for-profit organizations, public policy organizations, academic institutions, corporations and other experts on foreign policy or development issues related to persons with disabilities. The current non-government members are: Senda Benaissa, Joni Eareckson Tada, Vail Horton, John Kemp, Albert H. Linden, Jr., Kathleen Martinez, and John Register.

One non-government position on the Committee is currently vacant, and applications are now being accepted for that position. Individuals who wish to be considered for membership may forward their resumes to Stephanie Ortoleva, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, 2201 C St., NW., Room 7822, Washington, DC 20520 by overnight or express mail (not regular postal mail), or by fax to: 202–647–4434 or, in electronic form, to: *ortolevas@state.gov.* All letters of interest and resumes must be received by October 10, 2006.

The Secretary along with the Administrator of the Agency for International Development will appoint the new member from a list comprised of candidates who apply by the above deadline and candidates from other sources. The term of membership will be 2 years.

Dated: September 21, 2006.

Stephanie Ortoleva,

Foreign Affairs Officer and Advisory Committee Executive Director, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. E6–15836 Filed 9–26–06; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 5554]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, October 10, 2006, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of this meeting is to prepare for the Ninety-second Session of the International Maritime Organization's (IMO) Legal Committee (LEG 92) scheduled from 16–20 October 2006.

The provisional LEG 92 agenda calls for the Legal Committee to further examine the draft Wreck Removal Convention. To be addressed as well are the Provisions of Financial Security which includes a progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers; and includes follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Legal Committee will review the Guidelines on fair treatment of seafarers in the event of a maritime accident. Also on the LEG 92 agenda are monitoring of the implementation of the HNS Convention, matters arising from the ninety-sixth session of the Council, and election of officers. Finally the committee will review technical cooperation activities related to maritime legislation, biennium activities within the context of the Organization's

Strategic Plan, and the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee, in addition to allotting time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Charles Michel or Lieutenant Commander Laurina Spolidoro, at U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *Laurina.M.Spolidoro@uscg.mil,* telephone (202) 372–3794; fax (202) 372–3972.

Dated: September 21, 2006.

Michael Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–15835 Filed 9–26–06; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 06–05]

Sunshine Act Meeting

TIME AND DATE: 10 a.m., September 29, 2006. Walker County Civic Center, 10052 North Highway 27, Rock Spring, Georgia 30739.

STATUS: Open.

Agenda

Old Business

Approval of minutes of July 28, 2006, Board Meeting.

New Business

1. President's Report.
2. Report of the Finance, Strategy, and Rates Committee.
   A. Power supply arrangements with Bristol, Virginia.
   B. Extension of power supply arrangements with Warren Rural Electric Cooperative Corporation.
   C. Termination of Limited Interruptible Power (LIP) and Limited Firm Power (LFP) Programs.
3. Report of the Operations, Environment, and Safety Committee.
   A. Contract with Stone and Webster Construction, Inc., for supplemental maintenance and modifications for TVA nuclear operating units and for Browns Ferry Nuclear Plant Unit 1 recovery.
   B. Revisions to the approval of the contract with Louisiana Energy Services, L.P., for uranium enrichment services for Sequoyah and Watts Bar Nuclear Plants Units 1.
4. Report of the Audit and Ethics Committee.
5. Report of the Community Relations Committee.
6. Report of the Human Resources Committee.
   A. TVA's contribution to the TVA Retirement System.
   B. Delegation of authority to the Chief Executive Officer to approve trustees, Retirement System investment managers and their agreements, and retirement plan amendments which do not increase plan liabilities or have a direct cost impact on TVA.
   C. Renewal and extension of interim human resource and labor relations delegations until December 31, 2006.
   D. Award of contract to Medco to administer TVA's prescription drug plan for employees and retirees.
   E. FY 2007 Corporate Scorecard.
   F. Other.
7. Report of the Corporate Governance Committee.
8. Approval of Committee charters.
9. Information item approved by the Board previously.
   A. Selection of William Stanley Orser as Interim Chief Operating Officer.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: September 22, 2006.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 06–8335 Filed 9–25–06; 12:58 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33–7, Certification of 30-Second and 2-Minute One-Engine-Inoperative (OEI) Ratings for Rotorcraft Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 33–7, Certification of 30-Second and 2-Minute One-Engine-Inoperative (OEI) Ratings for Rotorcraft Turbine Engines. This AC sets forth acceptable methods of compliance with the requirements for 30-second OEI and 2-minute OEI rotorcraft turbine engine ratings in part 33 of Title 14 of the Code of Federal Regulations.

DATES: The Engine and Propeller Directorate issued AC 33–7 on September 6, 2006.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7115; fax: (781) 238–7199; e-mail: *chung.hsieh@faa.gov*.

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

How to obtain copies: A paper copy of AC 33–7 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/regulations_policies* (then click on ''Advisory Circulars'').

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704)

Issued in Burlington, Massachusetts on September 6, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–8309 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of Review of Noise Compatibility Program for Fresno Yosemite International Airport, Fresno, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program, at the request of the city of Fresno, owner and operator of Fresno Yosemite International Airport, under the provisions of 49 U.S.C. 47501 *et. seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150.

DATES: *Effective Date:* The effective date of the FAA's termination of its review of the Fresno Yosemite International Airport Noise Compatibility Program is September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, San Francisco Airports District Office, Airports Division, Western-Pacific Region, Federal Aviation Administration, 831 Mitten Road, Burlingame, California, 94010. Telephone: 650/876–2778, extension 613.

SUPPLEMENTARY INFORMATION: On July 6, 2005 (70 FR 50437–50438), the FAA determined that the noise exposure maps submitted by the City of Fresno were in compliance with applicable requirements under 14 CFR part 150. Subsequently, the City of Fresno submitted its noise compatibility program for the subject airport to the FAA for formal FAA review that began on May 26, 2006 (71 FR 33032–33033). In a letter received by FAA on September 15, 2006, the City of Fresno requested that FAA suspend its review and processing of the noise compatibility program in order to modify the document. When the FAA has received the revised documentation, FAA will reissue appropriate notice establishing new review and approval periods in accordance with section 150.33(e) of 14 CFR part 150.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on September 15, 2006.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–8308 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–31]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 17, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–24441] 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 20590–001.

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.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on September 15, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–24441.

Petitioner: Miami Dade Fire Rescue.

Section of 14 CFR Affected: 14 CFR 135.271(d).

Description of Relief Sought: To allow Miami Dade Fire Rescue to use its current pilot's duty day schedule of 24 hours on duty followed by 48 hours off duty, while not guaranteeing 8 consecutive hours of rest during the 24 hour period.

[FR Doc. E6–15865 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Eighth (28th) Joint Meeting, RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held October 16–20, 2006, starting at 1 p.m.

ADDRESSES: The meeting will be held at EUROCAE, 102 RUE Etienne Dolet, 92204 Malakoff-France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* Additional information on directions, maps, and nearby hotels may be found

by accessing the RTCA Web site. (2) EUROCAE Contact: Gilbert Amato—Secretary General, Tel: +33 (0)1 40 92 79 30; fax +33 (0)1 46 55 62 65; e-mail *gilbert.amato@eurocae.com.*

Note: Submit your name and company to *serge.bagieu@airbus.com* no later than October 1, 2006. Information on EUROCAE can be found at *http://www.eurocae.org/.* Dress is business casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting.

Meeting Objectives

- Produce Oceanic Safety and Performance Standard (PU–24) for final review and consultation (FRA).
- Resolve all FRAC comments and produce final draft for approval and publication of the following:
- New document, FANS 1/A–ATN Interoperability Standard (PU–40).
- Revised document, ED–110B/DO–280B, ATN B1 Interoperability Standard.
- Revised document, ED–120A/DO290A, Continental SPR Standard.

Note: See current work item index attached to Summary of the 27th Meeting for details on scope of work.

- The plenary agenda will include:
- October 16:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review and approval of Agenda and Meeting Minutes) Administrative.
- SC–189/WG–53 co-chair progress report and review of work program.
- Determine and agree to breakout groups if necessary.
- October 17–19:
- Breakout groups, as agreed, and plenary debriefs, as necessary.
- October 20:
- Breakout Groups.
- Debrief on Progress for the Week.
- Closing Plenary Session (Review schedule and new action items. Any other business, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–8307 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–06–25734; Notice 1]

Pipeline Safety: Request for Waiver; Freeport LNG

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to Consider Waiver Request.

SUMMARY: Freeport Liquefied Natural Gas (FLNG) facility requests a waiver of compliance from the regulation that requires every liquefied natural gas (LNG) facility constructed after March 31, 2000 to comply with the National Fire Protection Association's standard 59A (NFPA 59A), 2001 Edition.

DATES: Persons interested in submitting written comments on the waiver request described in this notice must do so by October 27, 2006. Late filed comments will be considered as far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.* All written comments should identify the docket and notice number stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on ''Comment/Submissions.'' You can also read comments and other material in the docket. General information about the Federal pipeline safety program is available at http://phmsa.dot.gov.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete privacy Act Statement in the **Federal Register** published on April 11, 2000 (7019477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), 400 7th Street, SW., Room 2103, Washington, DC 20590, or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FLNG requested a waiver of compliance from the regulatory requirement at 49 CFR 193.2301. This regulation requires each LNG facility constructed after March 31, 2000, to comply with 49 CFR part 193 and paragraph 4.2.1 in NFPA 59A, 2001 Edition.

NFPA 59A requires that welded containers designed for not more than 15 pounds per square inch gauge (psig) comply with the Eighth Edition, 1990, of the American Petroleum Institute standard 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q).* The Eighth Edition of API 620 requires inspection according to Appendix Q, which calls for the full radiographic examination of all vertical and horizontal butt welds associated with the container.

FLNG is proposing to use the 2002 Tenth Edition, Addendum 1, of API 620. The Tenth Edition, Addendum 1, of API 620, allows for ultrasonic examination, instead of radiography, as an acceptable alternative to examining butt welds associated with the container. FLNG proposes to use ultrasonic examination which consists of full semi-automated and manual ultrasonic examination using shear wave probes. The examination also consists of a volumetric ultrasonic examination using a combination of creep wave probes and focused angled longitudinal wave probes.

FLNG asserts that ultrasonic examination has several advantages over radiographic examination, namely it:

- Produces faster examination rates with equal reliability;
- Yields higher weld productivity rates and overall lower project cost;
- Employs a linear scanning process and allows both sides of the weld to be examined simultaneously;
- Offers results reviewable by personnel both on-site and off-site;
- Utilizes inspection data which can be stored, analyzed, and shared digitally; and

• Improves weld inspection personnel safety.

For the reasons stated, FLNG is requesting a waiver from 49 CFR 193.2301 which requires compliance with 49 CFR part 193 and NFPA 59A. Moreover, FLNG is asking that it be allowed to use the ultrasonic examination method in the Tenth Edition, Addendum 1, of API 620 instead of the radiographic examination method in the Eighth Edition of API 620.

The NFPA 59A Technical Committee recently approved and recommended the acceptance of the 2002, Tenth Edition, Addendum 1 of API 620 with three limitations. PHMSA has only incorporated by reference the 2001 Edition of NFPA 59A, therefore a waiver is required for the 2006 Edition.

PHMSA will consider FLNG's waiver request and whether FLNG's proposal will yield an equivalent or greater degree of safety than that currently provided by the regulations.

This notice is PHMSA's only request for public comment before making a decision. After considering any comments received, PHMSA will make a determination to grant FLNG's waiver request as proposed or with modifications and conditions, or deny FLNG's request. If the waiver is granted and PHMSA subsequently determines that the effect of the waiver is inconsistent with pipeline safety, PHMSA may impose additional conditions on the operator or revoke the waiver at its sole discretion.

Issued in Washington, DC on September 19, 2006.

Theodore L. Willke,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. E6–15877 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–06–25735; Notice 1]

Pipeline Safety: Request for Waiver; Sabine Pass LNG

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Notice of intent to consider waiver request.

SUMMARY: Sabine Pass Liquefied Natural Gas (SPLNG) facility requests a waiver of compliance from the regulation that requires every Liquefied Natural Gas (LNG) facility constructed after March 31, 2000 to comply with the National Fire Protection Association's standard 59A (NFPA 59A), 2001 Edition.

DATES: Persons interested in submitting written comments on the waiver request described in this notice must do so by October 27, 2006. Late filed comments will be considered as far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.* All written comments should identify the docket and notice number stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on ''Comment/Submissions.'' You can also read comments and other material in the docket. General information about the Federal pipeline safety program is available at *http://phmsa.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), 400 7th Street, SW., Room 2103, Washington, DC 20590, or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

SPLNG requests a waiver of compliance from the regulatory requirement at 49 CFR 193.2301. This regulation requires each LNG facility constructed after March 31, 2000, to comply with 49 CFR Part 193 and paragraph 4.2.1 in NFPA 59A, 2001 Edition.

NFPA 59A requires that welded containers designed for not more than 15 pounds per square inch gauge (psig) comply with the eighth edition, 1990, of American Petroleum Institute standard 620 (API 620), *Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q).* The Eighth Edition of API 620 requires inspection according to Appendix Q, which calls for the full radiographic examination of all vertical and horizontal butt welds associated with the container.

SPLNG is proposing to use the 2002 Tenth Edition, Addendum 1, of API 620. This Edition allows for ultrasonic examination, instead of radiography, as an acceptable alternative to examining butt welds associated with the container. SPLNG proposes to use ultrasonic examination on its project which consists of full semi-automated and manual ultrasonic examination using shear wave probes. The examination also consists of a volumetric ultrasonic examination using a combination of creep wave probes and focused angled longitudinal wave probes.

SPLNG asserts that ultrasonic examination has several advantages over radiographic examination, namely it:

• Produces faster examination rates with equal reliability;

• Yields higher weld productivity rates and overall lower project cost;

• Employs a linear scanning process and allows both sides of the weld to be examined simultaneously;

• Offers results reviewable by personnel both on-site and off-site;

• Utilizes inspection data which can be stored, analyzed, and shared digitally;

• Eliminates hazardous materials disposal issues; and

• Improves weld inspection personnel safety.

For the reasons stated, SPLNG is requesting a waiver from 49 CFR 193.2301 which requires compliance with 49 CFR part 193 and NFPA 59A. Moreover, SPLNG is asking that it be allowed to use the ultrasonic examination method in the Tenth Edition, Addendum 1, of API 620 instead of the radiographic examination method in the Eighth Edition of API 620.

The NFPA 59A Technical Committee recently approved and recommended the acceptance of the 2002, Tenth Edition, Addendum 1 of API 620 with three limitations. PHMSA has only incorporated by reference the 2001 Edition of NFPA 59A, therefore a waiver is required for the 2006 Edition.

PHMSA will consider SPLNG's waiver request and whether SPLNG's proposal will yield an equivalent or greater degree of safety than that

currently provided by the regulations. This notice is PHMSA's only request for public comment before making a decision. After considering any comments received, PHMSA's will make a determination to grant SPLNG's waiver request as proposed or with modifications and conditions or deny SPLNG's request. If the waiver is granted and PHMSA subsequently determines that the effect of the waiver is inconsistent with pipeline safety, PHMSA may impose additional conditions on the operator or revoke the waiver at its sole discretion.

Issued in Washington, DC on September 19, 2006.

Theodore L. Willke,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. E6–15880 Filed 9–26–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 275X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Gaston County, NC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 2.0-mile line of railroad between milepost HG 45.0 and milepost 47.0 in Gastonia, in Gaston County, NC. The line traverses United States Postal Service Zip Codes 28052, 28054, and 28056 and includes the former station of North Gastonia.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 27, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 10, 2006.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 2, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by September 27, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 18, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–8167 Filed 9–26–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

[3] NSR states that the City of Gastonia (the City) is interested in acquiring a 1.8-mile segment of the right-of-way between milepost HG 45.0 and milepost 46.8 for interim trail use under the National Trails System Act and for the creation of a greenway. NSR indicates that it is agreeable to conveying this segment to the City.

Federal Register

Wednesday,
September 27, 2006

Part II

Postal Service

39 CFR Part 111

New Standards for Domestic Mailing Services; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On May 3, 2006, the Postal Service filed a request with the Postal Rate Commission to change prices for virtually all domestic mailing services. The Commission designated the filing as Docket No. R2006–1. This proposed rule provides the mailing standards that would accompany the new prices if the R2006–1 price change proposal is adopted.

DATES: We must receive your comments on or before November 13, 2006.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 202–268–7266.

SUPPLEMENTARY INFORMATION: The Postal Service's request in Docket No. R2006–1 includes mail classification changes, new pricing structures, and price changes for most domestic mailing services. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) that we would adopt to implement the R2006–1 price change proposal. We summarize our revisions by class of mail and extra service, and we provide our proposed changes to the mailing standards in the DMM. We invite your comments on all aspects of our proposed standards.

We also provide the proposed prices, price categories, and price structures that are currently under review by the Postal Rate Commission. The pricing proposal is subject to separate Commission proceedings. For more information visit *http://www.prc.gov.*

This is the first time since 2001 that we have proposed any restructuring to our prices. We adjusted prices in January 2006 solely to fund a $3.1 billion escrow account required by federal law. When our new prices are implemented in 2007, postage prices will have grown at or below the Consumer Price Index since 1971.

Overview

Our pricing proposal reflects changes in operations and the marketplace. Our proposal would enhance efficiency, offer more choices, and ensure that all types of mail cover their costs. We include incentives to create mailpieces compatible with our processing systems and deposit flats and parcels closer to where they are delivered.

Our proposed prices recognize that each shape of mailpiece—letter, flat, and parcel—has substantially different processing costs that need to be covered. Our current prices do not distinguish between shapes as much as they could. For example, in First-Class Mail, our current price is 63 cents for a 2-ounce piece regardless of whether it is a letter, flat, or parcel.

We also provide opportunities to mitigate the impact of price increases. If the contents of a First-Class Mail flat are folded and placed into a letter-size envelope, the mailer could save as much as 20 cents. If a parcel is reconfigured as a flat, the mailer could save up to 38 cents.

To better align mail preparation with our processing capabilities and to maximize access to lower rates for mailers, we propose to require scheme preparation wherever appropriate. We define the terms ''5-digit/scheme'' and ''3-digit/scheme'' as the preparation of bundles and containers for 5-digit and 3-digit ZIP Code combinations in any of our scheme labeling lists, and single 5-digit and 3-digit ZIP Codes not on these lists. We also propose to require all flat-size pieces to be uniformly thick.

First-Class Mail

Our proposal introduces prices based on the shape of mail and our relative costs, with separate prices for letters, flats, and parcels. As shape becomes more important, weight becomes less important, and our proposal reduces prices for many pieces over 1 ounce.

First-Class Mail Retail Letters, Flats, and Parcels

The single-piece 1-ounce First-Class Mail letter price would increase $0.03, to $0.42, and the single-piece card price also would increase $0.03, to $0.27. The additional-ounce price would decrease $0.04, to $0.20.

We propose a ''forever stamp'' to make future price changes more convenient for consumers. The postage value of the forever stamp would equal the First-Class Mail single-piece 1-ounce letter rate at any time in the future, without the addition of extra postage.

Our pricing proposal would eliminate the nonmachinable surcharge. Instead, a letter-size mailpiece with nonmachinable characteristics would pay the flat-size price. Our additional handling costs are included in the proposed 1-ounce flat-size price, so no surcharge is necessary. To qualify for letter rates, the maximum weight for letter-size pieces would be 3.5 ounces.

First-Class Mail Discount Letters and Flats

The additional-ounce price for automation letters would decrease from $0.237 to $0.155. We would maintain the 150-piece minimum tray preparation requirement for automation First-Class Mail letters and cards. Sort levels would be 5-digit/scheme, 3-digit/scheme, 3-digit origin, automation area distribution center (AADC), and mixed AADC. We propose a simplified preparation to allow mailers of machinable letters to sort only to the AADC and mixed AADC levels. We would eliminate the carrier route automation preparation and discounts. The maximum weight for letter rates, including automation pieces, would be 3.5 ounces.

We would expand the current requirement for pieces to be rectangular to all flats. The physical standards for automation flats would be the current criteria for AFSM 100 pieces, with new standards for flexibility. We also propose to lessen the deflection standard.

Our proposal would eliminate the nonmachinable surcharge. Instead, letter-size mailpieces with nonmachinable characteristics would pay flat-size prices. Presorted prices would be available for machinable letters sorted to the 3-digit origin, AADC, and mixed AADC levels.

To help reduce the costs of handling mail in letter trays, we propose a no-overflow tray option for automation letters. In addition, to encourage fuller trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

First-Class Mail Discount Parcels

The structure for discount parcels includes new workshare prices. The proposed rate levels are 5-digit, 3-digit, ADC, and single piece. At least 10 pounds of parcels would be required for 5-digit sacks, 3-digit sacks, and ADC sacks. Remaining pieces sorted to a mixed ADC sack would pay the single-piece First-Class Mail parcel price.

Discount parcels would require a 5-digit UCC/EAN 128 or POSTNET barcode. Unless prepared in 5-digit containers or paid at the single-piece

rates, a surcharge would apply to all parcels that are not barcoded or weigh less than 2 ounces, or to irregularly shaped parcels such as triangles, tubes, rolls, and similar pieces.

Standard Mail

Our proposed prices encourage mail that is compatible with our operations and drop shipped closer to its destination. As in First-Class Mail, Standard Mail pricing has greater recognition of shape and reduced reliance on weight.

Standard Mail Letters

Automation letter sort levels would be 5-digit/scheme, 3-digit/scheme, AADC, and mixed AADC. We propose a simplified preparation to allow mailers of machinable letters to sort only to the AADC and mixed AADC levels.

Nonmachinable letter sort levels would be 5-digit, 3-digit, ADC, and mixed ADC, for which there would be separate rates. We would replace the nonmachinable surcharge with a separate rate structure for nonmachinable letters up to 3.3 ounces. Nonmachinable letters over 3.3 ounces would pay the flat-size rate or the Not Flat-Machinable rate.

Destination delivery unit (DDU) drop shipment entry rates would not be available for letters. However, destination sectional center facility (DSCF) entry rates would be allowed for DDU entry of some Enhanced Carrier Route letters, including letters with simplified addresses. Enhanced Carrier Route automation basic rates would be eliminated.

To help reduce the costs of handling mail in letter trays, we propose a no-overflow tray option for automation letters. In addition, to encourage fuller trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

Standard Mail Flats

The physical standards for automation flats would be the criteria for AFSM 100 pieces, with new standards for flexibility. This change would maximize the number of flats we can process in automated operations and deliver as flats. We also propose to lessen the deflection standard.

We propose to increase the maximum size for carrier route flats so that the same standards apply to all flats, regardless of the rate paid. We would expand the current requirement for pieces to be rectangular to all flats, except Customized MarketMail.

Standard Mail Not Flat-Machinable Pieces

Our proposal includes a new Not Flat-Machinable (NFM) classification for rigid flat-size pieces and for pieces that are currently automation-compatible only by meeting UFSM 1000 standards. We propose no bundling requirement for most NFMs and to have mailers prepare pieces in 5-digit/scheme, 3-digit, ADC/BMC, and mixed ADC/BMC containers. We propose allowing a DDU entry discount for NFMs sorted to 5-digit destinations when drop shipped directly to the DDU. There would be no minimum for NFMs drop shipped to DDUs. Unless prepared in 5-digit/scheme containers, a surcharge would apply to all NFMs that are not barcoded.

Standard Mail Parcels

We propose to eliminate the residual shape surcharge for Standard Mail parcels. We would no longer offer a $0.03 machinable barcode discount. Instead, parcel prices would include a requirement for barcodes. Unless prepared in 5-digit containers, a surcharge would apply to all parcels that are not barcoded.

We would rename ''irregular'' parcels as ''nonmachinable'' parcels and remove the bundling requirement for all Standard Mail nonmachinable parcels except enhanced carrier route pieces. We propose to reduce the required minimum quantity of nonmachinable parcels in sacks to 10 pounds per sack.

We would allow mailers to commingle machinable parcels, nonmachinable parcels, and the new Not Flat-Machinable pieces when they are able to combine them in 5-digit containers. We would allow mailers to combine certain ZIP Codes for Standard Mail parcels, machinable Parcel Select, and Bound Printed Matter parcels when prepared in 3-digit containers and entered at designated SCFs.

We propose to allow a DDU entry discount for parcels sorted to 5-digit destinations when drop shipped directly to the DDU. There would be no minimum for the amount of parcels drop shipped to a DDU. The DDU discount is currently available only for pieces sorted to carrier routes.

Customized MarketMail

Rates for Customized MarketMail would equal the 5-digit rate for Not Flat-Machinable pieces, and mailers would still be required to drop ship Customized MarketMail pieces to DDUs.

Detached Address Labels

Our proposal includes a new $0.015 charge for detached address labels with Enhanced Carrier Route saturation flat-size pieces. Mailers who prepare mail with addresses on their mailpieces could avoid the new charge.

Periodicals

Our proposed Periodicals prices encourage mailers to use pallets rather than sacks, and to fill sacks with more mail. We also enhance drop ship incentives to encourage mailers, including publishers of high editorial content publications, to enter Outside-County mail closer to its destination.

The pricing proposal includes a new $0.85 Outside-County Container Rate. The container rate would apply to pallets, sacks, or trays of Outside-County Periodicals mail. We also propose new drop ship prices based on nonadvertising pounds, in addition to increased per-piece drop ship discounts.

To encourage fuller letter trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

Package Services

Package Services includes Parcel Post, Bound Printed Matter, Media Mail, and Library Mail. Our proposal simplifies Package Services offerings and moves toward more efficient handling of parcels.

Parcel Post

Currently, parcels weighing less than 15 pounds and measuring more than 84 inches in combined length and girth are charged the 15-pound rates (the ''balloon rate''). Under our proposal, parcels weighing less than 20 pounds and measuring more than 84 inches in combined length and girth would be charged the 20-pound rates.

The current $0.03 barcode discount available for machinable Parcel Select destination bulk mail center (DBMC) entry mail would be incorporated into the price and a barcode would be required. Nonbarcoded machinable pieces could claim only the applicable Intra-BMC/ASF rate.

We do not propose any changes to mail preparation standards for Parcel Post.

Bound Printed Matter

Single-piece Bound Printed Matter would be renamed ''nonpresorted'' Bound Printed Matter and would be eliminated as a retail option. The $0.08 discount off the parcel price for flat-size pieces increases to $0.16. The $0.03 per piece POSTNET barcode discount for flat-size mail and the $0.03 per piece barcode discount for machinable parcels would remain the same.

We propose to require 5-digit/scheme and 3-digit/scheme bundles and 5-digit/scheme sacks for presorted flat-size Bound Printed Matter. We propose to require 5-digit/scheme bundles for nonmachinable parcels weighing less than 10 pounds and 5-digit/scheme sacks for machinable and nonmachinable parcels.

Media Mail and Library Mail

We propose to require 5-digit/scheme and 3-digit/scheme bundles and 5/digit scheme sacks for presorted flat-size Media Mail and Library Mail. We propose to require 5-digit/scheme bundles for nonmachinable parcels and 5-digit/scheme sacks for machinable and nonmachinable parcels.

Priority Mail

We continue to offer convenience in Priority Mail. The USPS-produced flat-rate envelope still would pay the 1-pound price, $4.65 under the proposal, regardless of weight or destination. USPS-produced flat-rate boxes would pay $8.80 under the proposal, regardless of weight or destination, and would become a permanent offering. Prices for all Priority Mail pieces weighing over 25 pounds would decrease for all zones, many by as much as 20 percent.

Currently, Priority Mail pieces weighing less than 15 pounds and measuring more than 84 inches in combined length and girth are charged the 15-pound rates (the ''balloon rate''). Under the proposal, Priority Mail pieces weighing less than 20 pounds and measuring more than 84 inches in combined length and girth would be charged the 20-pound rates. The new balloon rate would apply only to pieces addressed for local delivery and to zones 1–4.

Priority Mail pieces that exceed 1 cubic foot and are addressed to zones 5–8 could be subject to a new dimensional weight price. Postage for these pieces would be rated at the greater of their actual weight or their dimensional weight. In general, if a piece is relatively light for its size, it may be subject to a dimensional weight price. Dimensional weight is calculated using one of two formulas, one for rectangular and one for nonrectangular pieces.

Express Mail

Express Mail pieces often contain material that ranges from a half pound to 2 pounds. Currently, these pieces pay the 2-pound price. To keep Express Mail a viable, low-cost alternative for mailers, the pricing proposal would add a new 1-pound price.

The flat-rate envelope would continue to pay the half-pound price, regardless of weight.

Extra Services

Our proposal keeps insured mail reliable, easy, and affordable. All insured pieces would have a barcoded label and receive a delivery scan. We would not require a signature for insured items with an indemnity of $200 or less.

We propose new prices for Bulk Parcel Return Service, Business Reply Mail, Certificate of Mailing, Certified Mail, Collect on Delivery, Delivery Confirmation, Bulk Insurance, Express Mail Insurance, Merchandise Return Service, Money Orders, Parcel Airlift, Parcel Return Service, Registered Mail, Restricted Delivery, Return Receipt, Return Receipt for Merchandise, Signature Confirmation, and Special Handling.

Other Services

Our proposal seeks to modernize our services, improve address quality, and reduce undeliverable-as-addressed mail.

The Address Change Service electronic option for First-Class Mail would decrease from $0.21 to $0.06. All other classes of mail would increase from $0.21 to $0.25. Manual Address Correction Service for all classes of mail would decrease from $0.75 to $0.50.

A new automated option for Address Change Service would allow First-Class Mail letters to receive the first two notices at no charge, then each additional notice for $0.05 each. Standard Mail letters would receive the first two notices at $0.02, then each additional notice for $0.15 each. This new option would require mailers to use the new 4-State Customer Barcode.

Our proposed standards recognize the value of address matching software by encouraging mailers of all discount letters and flats to match their addresses using a Coding Accuracy Support System (CASS)—certified address matching process and the correct ZIP+4 code on each piece in their mailings. Because smaller mailers may need time to initiate such a change, we propose to implement this requirement in July 2009.

The fee structure for Confirm service would change from the Silver, Gold, and Platinum tiers to a unit-based structure. Customers would pay standardized annual fees and purchase blocks of units that are redeemed for Confirm scans. Units are redeemed at the rates of one unit per First-Class Mail scan or five units per scan for any other class of mail. The cost per block of units declines as volume thresholds are reached.

On-site meter services are no longer offered. The fees associated with on-site meter service, meter resetting, examination, and checking meters in and out of service would be eliminated.

Individual post office box holders at different locations may experience varying price changes as we continue to align prices with our costs for each location. Our proposal would also align the Caller Service fees.

We propose price changes for Address Sequencing Service, Mailing List Service, Permit Imprint fees, Pickup on Demand service, Premium Forwarding Service, Shipper Paid Forwarding, Stamped Cards, Stamped Envelopes, and all annual mailing fees.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C 410 (a)), we invite comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

100 Retail Mail: Letters, Cards, Flats, and Parcels

101 Physical Standards

1.0 Physical Standards for Letters

1.1 Dimensional Standards for Letters

* * * * *

[Renumber item c as item d. Insert new item c as follows:]

c. Not more than 3.5 ounces.

* * * * *

2.0 Physical Standards for Flats

2.1 General Definition

* * * * *

[Renumber current item c as new item f. Insert new items c through e as follows:]

c. Flexible (see 1.3).

d. Rectangular.

e. Uniformly thick (see 1.4)

* * * * *

[Insert new 2.2 through 2.4 as follows:]

2.2 Flexibility

Flat-size pieces must meet minimum flexibility criteria. Test flexibility as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a central point about an inch off the edge of the surface, exerting a steady pressure.

3. The piece is flexible if it can bend at least 2 inches without being damaged.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a central point about an inch off the edge of the surface, exerting a steady pressure.

3. The piece is flexible if it can bend at least 1 inch without being damaged.

2.3 Uniform Thickness

The contents of a flat-size mailpiece must remain uniformly thick so that the dimensions of the envelope, wrapper, or sleeve remain constant. If the contents are of irregular thickness or significantly smaller than the envelope, wrapper, or sleeve, those contents must be secured to prevent shifting within the wrapping during processing and surrounded with material or padding to ensure that the mailpiece remains uniformly thick.

2.4 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 2.1 through 2.3 are not eligible for flat-size rates and must pay applicable parcel rates.

3.0 Physical Standards for Parcels

* * * * *

[Change the terminology from ''irregular'' parcels to ''nonmachinable'' parcels in the heading and text of 3.5.]

* * * * *

5.0 Additional Physical Standards for Priority Mail

* * * * *

5.2 Two or More Packages

[Revise 5.2 as follows:]

With the exception of USPS-produced Priority Mail flat-rate envelopes or boxes, two or more packages may be mailed as a single parcel if they are about the same size or shape, are securely wrapped or fastened together, and do not exceed the weight or size limits.

* * * * *

6.0 Additional Physical Standards for First-Class Mail

* * * * *

6.4 Nonmachinable Pieces

6.4.1 Nonmachinable Letters

[Revise 6.4.1 as follows:]

Letter-size pieces with one or more of the nonmachinable characteristics in 1.2 are subject to the applicable postage for a flat-size piece, based on weight.

[Revise heading and text of 6.4.2 as follows:]

6.4.2 Nonmachinable Flats

Flat-size pieces that do not meet the standards in 2.0 are subject to the applicable postage for a parcel-size piece, based on weight.

* * * * *

[Delete 8.0, Additional Physical Standards for Bound Printed Matter. Renumber 9.0 and 10.0 as new 8.0 and 9.0.]

* * * * *

102 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

[Revise heading of 3.3 as follows:]

3.3 Mail Markings

[Revise first sentence of 3.3 as follows:]

Mailers must print the basic required Package Services subclass marking—''Parcel Post'' or ''PP,'' ''Media Mail,'' or ''Library Mail''—on each piece claimed at the respective rate. * * *

* * * * *

113 Rates and Eligibility

[We provide the proposed rates and fees for all Express Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Express Mail Rates and Fees

* * * * *

1.2 Express Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.4, Flat-Rate Envelope, Express Mail items are charged the 0.5-pound rate for items up to 0.5 pound. Items over 0.5 pound are rounded up to the next whole pound. For example, if a piece weighs 0.25 pound, the weight (postage) increment is 0.5 pound; if a piece weighs 0.75 pound, the weight (postage) increment is 1 pound; if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds.

* * * * *

120 Retail Mail: Priority Mail

123 Rates and Eligibility

[We provide the proposed rates and fees for all Priority Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Priority Mail Rates and Fees

* * * * *

1.2 Priority Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.3, 1.4, and 1.5, Priority Mail rates are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound rate. The Priority Mail rate up to 1 pound is based on weight only; rates for pieces weighing more than 1 pound are based on weight and zone. Other charges may apply. See Exhibit 1.2, *Priority Mail Rates.*

1.3 Minimum Rate for Parcels to Zones 1–4

[Revise 1.3 as follows:]

Parcels addressed for delivery to Zones 1–4 (including Local) that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable zone rate for a 20-pound parcel (balloon rate).

[Delete 1.6 and 1.7; renumber 1.4 and 1.5 as new 1.6 and 1.7. Insert new 1.4 and 1.5 as follows:]

1.4 Dimensional Weight Rate for Low-Density Parcels to Zones 5–8

Postage for parcels addressed for delivery to Zones 5–8 and exceeding 1 cubic foot (1,728 cubic inches) is charged based on the actual weight or the dimensional weight (as calculated in 1.4.1 or 1.4.2), whichever is greater.

1.4.1 Determining Dimensional Weight for Rectangular Parcels

Follow these steps to determine the dimensional weight for a rectangular parcel:

a. Measure the length, width, and height in inches. Round off each measurement.

b. Multiply the length by the width by the height.

c. If the result exceeds 1,728 cubic inches, divide the result by 194 and round up to the next whole number to

determine the dimensional weight in pounds.

1.4.2 Determining Dimensional Weight for Nonrectangular Parcels

Follow these steps to determine the dimensional weight for a nonrectangular parcel:

a. Measure the length, width, and height in inches at their extreme dimensions. Round off each measurement.

b. Multiply the length by the width by the height.

c. Multiply the result by an adjustment factor of 0.785.

d. If the result exceeds 1,728 cubic inches, divide the result by 194 and round up to the next whole number to determine the dimensional weight in pounds.

e. If the dimensional weight exceeds 70 pounds, the parcel pays the 70-pound rate.

1.5 Flat-Rate Boxes and Envelopes

Any amount of material may be mailed in a USPS-produced Priority Mail flat-rate box or flat-rate envelope. When sealing a flat-rate box or flat-rate envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container, provided the design of the container is not enlarged by opening the sides, and the container is not reconstructed in any way.

1.5.1 Flat-Rate Boxes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate box is charged $8.80, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate boxes are eligible for the flat-rate box rate.

1.5.2 Flat-Rate Envelopes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate envelope is charged $4.65, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope rate.

* * * * *

130 Retail Mail: First-Class Mail

133 Rates and Eligibility

[We provide the proposed rates and fees for all First-Class Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 First-Class Mail Rates and Fees

1.1 First-Class Mail Single-Piece Rate Application

* * * * *

[Revise the weight limit in item b as follows:]

b. The letter rate applies to letter-size pieces that meet the standards in 101.1.1 and weigh 3.5 ounces or less, and that are not eligible for and claimed at the card rate.

[Insert new items c and d as follows:]

c. The flat rate applies to flat-size pieces that meet the standards in 101.2.1 and letter-size pieces with one or more of the nonmachinable characteristics in 101.1.2.

d. The parcel rate applies to parcel-size pieces under 101.3.0 and to flat-size pieces that do not meet the standards in 101.2.0.

* * * * *

[Restructure the rate tables in 1.4 through 1.7 as new 1.4 through 1.8 and 1.10 to add separate letter, flat, and parcel rate tables. Delete current 1.9 and 1.10 for the nonmachinable surcharge. Renumber current 1.7 as new 1.9.]

1.9 Keys and Identification Devices

[Revise renumbered 1.9 to remove references to nonmachinable surcharge in the first three sentences as follows:]

Keys and identification devices (such as identification cards and uncovered identification tags) that weigh 13 ounces or less are returned at the applicable single-piece First-Class Mail parcel rate plus the fee. Keys and identification devices that weigh more than 13 ounces but not more than 1 pound are returned at the 1-pound Priority Mail rate plus the fee. Keys and identification devices weighing more than 1 pound but not more than 2 pounds are mailed at the 2-pound Priority Mail rate for zone 4 plus the fee. * * *

* * * * *

2.0 Basic Eligibility Standards for First-Class Mail

2.1 Description of Service

* * * * *

2.1.2 Rate Options

[Revise 2.1.2 to add shape-based reference as follows:]

First-Class Mail offers shape-based single-piece rates in 1.0.

* * * * *

150 Retail Mail: Parcel Post

153 Rates and Eligibility

[We provide the proposed rates and fees for all Parcel Post services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Parcel Post Rates and Fees

1.1 Rate Eligibility

* * * * *

[Revise item d as follows:]

d. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

* * * * *

1.7 Inter-BMC/ASF Machinable Parcel Post

[Revise the last sentence in 1.7 as follows:]

* * * Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

1.8 Inter-BMC/ASF Nonmachinable Parcel Post

[Revise the first three sentences in 1.8 as follows:]

Rates include the $3.62 nonmachinable surcharge. Regardless of weight, a parcel that meets any of the criteria in 101.7.2, *Nonmachinable Parcel Post Standards,* must pay the rate listed in Exhibit 1.9. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). * * *

1.10 Local and Intra-BMC/ASF Machinable Parcel Post

[Revise the third sentence in 1.10 as follows:]

* * * Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). * * *

1.11 Local and Intra-BMC/ASF Nonmachinable Parcel Post

[Revise the first three sentences in 1.11 as follows:]

Rates include the $1.85 nonmachinable surcharge. Regardless of weight, a parcel that meets any of the criteria in 101.7.2, Nonmachinable Parcel Post Standards, must pay the rates in Exhibit 1.12. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). * * *

160 Retail Mail: Bound Printed Matter

[Delete 160 in its entirety. These standards are incorporated into 360 and 460.]

* * * * *

200 Discount Mail: Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

* * * * *

1.1.2 Weight Standards for Machinable Letters

[Revise 1.1.2 to change the maximum weight for First-Class Mail machinable letters to 3.5 ounces as follows:]

The maximum weight for Presorted First-Class Mail machinable letters is 3.5 ounces (0.2188 pound). The maximum weight for Standard Mail machinable letters is 3.3 ounces (0.2063 pound).

* * * * *

2.0 Physical Standards for Nonmachinable Letters

* * * * *

[Delete 2.2.2. Renumber 2.2.1 as new 2.2 and revise as follows:]

2.2 Additional Criteria for First-Class Mail Nonmachinable Letters

Letter-size pieces (except pieces eligible for and mailed at card rates) with one or more of the nonmachinable characteristics in 2.1 are subject to the rates for flat-size pieces

[Delete 2.3.2. Renumber 2.3.1 as new 2.3 and revise as follows:]

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

The nonmachinable rates in 243.1.5 apply to Standard Mail letter-size pieces that weigh 3.3 ounces or less and have one or more of the nonmachinable characteristics in 2.1.

3.0 Physical Standards for Automation Letters and Cards

* * * * *

3.3 Weight Standards for First-Class Mail Automation Letters and Cards

[Revise 3.3 to change the weight limit as follows:]

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

3.4 Weight Standards for Standard Mail Automation Letters

[Revise 3.4 to remove the reference to automation carrier route mail as follows:]

Maximum weight for Standard Mail mailed at automation and Enhanced Carrier Route high density and saturation rates is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

3.3 Placement of Mail Markings

* * * * *

[Revise item b, item b3, and item c to delete ''AUTOCR.'']

* * * * *

3.4 Exceptions to Markings

* * * * *

[Revise item a to remove references to carrier route mail as follows:]

a. Automation Letters: First-Class Mail and Standard Mail letters do not require an ''AUTO'' marking if they bear a delivery point barcode in the address block or on an insert visible through a window. First-Class Mail letters not marked ''AUTO'' must bear both the ''Presorted'' or ''PRSRT'' and ''First-Class'' markings. Standard Mail letters not marked ''AUTO'' must bear the appropriate basic marking in 3.3a.

[Revise the second sentence in item b as follows:]

b. * * * The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0, Manifest Mailing System, meets the requirement for other rate markings.

* * * * *

230 Discount Letters and Cards: First-Class Mail

233 Rates and Eligibility

[We provide the proposed rates and fees for all First-Class Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 to add ''letter'' as follows:]

Postage is based on the letter rate that applies to the weight of each addressed piece.

1.2 Rate Computation for First-Class Mail Letters

[Revise the first sentence in 1.2 to add ''letter'' as follows:]

First-Class Mail letter rates are charged per ounce or fraction thereof; any fraction of an ounce is considered a whole ounce. * * *

* * * * *

[Delete 1.13, 1.14, and 1.16. Renumber 1.15 as new 1.13. Renumber 1.17 through 1.19 as new 1.14 through 1.16.]

* * * * *

3.0 Basic Standards for First-Class Mail Letters

3.1 Description of Service

* * * * *

3.1.2 Rate Options

[Revise 3.1.2 as follows:]

First-Class Mail letters offer shape-based single-piece rates in 133.1.0 and discounted rates in 1.0 for presorted mailings of 500 or more pieces that weigh 3.5 ounces or less.

* * * * *

3.3 Additional Standards for First-Class Mail

[Revise introductory text in 3.3 as follows:]

All pieces of presorted First-Class Mail letters must:

* * * * *

[Revise the weight in item b as follows:]

b. Weigh 3.5 ounces or less.

* * * * *

3.6 ZIP Code Accuracy

3.6.1 Basic Standards

[Revise the text in 3.6.1 as follows:]

The ZIP Code accuracy standard is a means of ensuring that the ZIP+4 or 5-digit ZIP Code in the delivery address correctly matches the delivery address information. For the purposes of this standard, *address* means a specific address associated with a specific ZIP+4 or 5-digit ZIP Code. Effective July 2009, mailers of all discount letters, flats, and parcels must properly code and match their address lists using one of the CASS-certified address matching methods in 708.3.0 and use the correct ZIP+4 code on each mailpiece. Mailers are encouraged to begin this practice immediately. Addresses used on pieces claiming discount rates must meet these requirements:

a. Each address and associated ZIP+4 or 5-digit ZIP Code used on the mailpieces in a mailing must be verified and corrected within 12 months before the mailing date with one of the USPS-approved methods in 3.6.2.

b. If an address used on a mailpiece in a mailing at one class of mail and rate is verified and corrected with an approved method, the same address may be used during the following 12 months to meet the ZIP Code accuracy standard required for mailing at any other class of mail and rate.

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Letters

* * * * *

[Revise heading of 4.3 as follows:]

4.3 Letters With Nonmachinable Characteristics

[Revise 4.3 to delete nonmachinable surcharge as follows:]

Letters with one or more of the nonmachinable characteristics in 201.2.1 must pay the flat-size rate. In addition to the standards in 3.0, *Basic Standards for First-Class Mail Letters,* all pieces in a First-Class Mail Presorted nonmachinable letter-size mailing must be marked, sorted, and documented according to 235.5.4, *Nonmachinable Preparation.*

* * * * *

[Revise heading of 5.0 to delete ''Carrier Route'' as follows:]

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Letters

[Revise heading of 5.1 as follows:]

5.1 Basic Standards for Automation First-Class Mail Letters

* * * * *

[Delete item d2. Move text in item d1 into item d.]

* * * * *

[Delete 5.2, Carrier Route Accuracy, and renumber 5.3 and 5.4 as new 5.2 and 5.3.]

* * * * *

5.2 Maximum Weight for Automation Letters

[Revise renumbered 5.2 to change maximum weight from 3.3 to 3.5 ounces as follows:]

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound) (see 201.3.13.4, *Heavy Letter Mail,* for pieces heavier than 3 ounces).

5.3 Rate Application—Automation Cards and Letters

* * * * *

[Delete item a. Renumber items b through e as new items a through d and revise as follows:]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for the 5-digit rate is optional. Pieces placed in full 3-digit/scheme trays in lieu of 5-digit/scheme overflow trays under 235.6.6 are eligible for the 5-digit rates.

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays in lieu of 3-digit/scheme overflow trays under 235.6.6 are eligible for the 3-digit rates.

c. Groups of fewer than 150 pieces in origin 3-digit/scheme trays and all pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays in lieu of AADC overflow trays under 235.6.6 are eligible for the AADC rates.

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 5.3c.

* * * * *

[Delete 5.5 and renumber 5.6 and 5.7 as new 5.4 and 5.5.]

* * * * *

[Delete renumbered 5.4.7, Rural and Highway Contract Routes.]

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted Letters

* * * * *

2.2 Affixed Postage for Presorted First-Class Mail

* * * * *

[Revise item b to delete the reference to the nonmachinable surcharge as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for any additional ounces or extra services.

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.2 Definitions of Mailings

* * * * *

[Revise the second sentence in item a to remove ''automation carrier route'' as follows:]

a. * * * Generally, automation and nonautomation letters must be prepared as separate mailings. * * *

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Delete item a and renumber items b through k as new items a through j.]

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Revise item b as follows:]

b. A *full letter tray* is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[Revise item e by deleting the last sentence.]

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

* * * * *

[Revise item a by deleting the first sentence and revising the remaining sentence as follows:]

a. The maximum thickness for bundles is 6 inches.

* * * * *

[Delete item d and renumber items e and f as new items d and e.]

* * * * *

2.8 Labeling Bundles

[Revise the first sentence in 2.8 by deleting the reference to carrier route bundles as follows:]

Unless excepted by standard, the presort level of each bundle must be identified either with an optional endorsement line under 708.7.0 or with a barcoded pressure-sensitive bundle label. * * *

* * * * *

[Delete 2.10 and 2.11.]

* * * * *

4.0 Tray Labels

* * * * *

4.4 Line 2 (Content Line)

[Revise the table in item 4.4b to delete the entries for ''Carrier Route,'' ''Carrier Routes,'' ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section,'' and ''Rural Route.'']

* * * * *

5.0 Preparation for Nonautomation Letters

* * * * *

[Delete 5.2, Manual Only Option, and renumber 5.3 and 5.4 as new 5.2 and 5.3.]

5.2 Machinable Preparation

* * * * *

5.2.2 Traying and Labeling

[Revise the introductory text in 5.2.2 as follows:]

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays.

* * * * *

[Delete item a about labeling the 5-digit tray. Renumber items b through d as

new items a through c. Revise renumbered item a to reflect the 3-digit origin tray as follows:]

a. Separate 3-digit origin trays required for each origin 3-digit ZIP Code; one less-than-full tray permitted for each origin ZIP Code; labeling:

1. Line 1: L002, Column A.
2. Line 2: ''FCM LTR 3D MACH.''

* * * * *

5.3 Nonmachinable Preparation

5.3.1 Nonmachinable Bundling

[Revise the second-to-last sentence in 5.3.1 as follows:]

* * * Smaller volumes are not permitted except for mixed ADC bundles. * * *

* * * * *

6.0 Preparation for Automation Rate Letters

* * * * *

6.2 Mailings

* * * * *

[Revise item b as follows:]

b. First-Class Mail. A single automation rate First-Class Mail mailing may include pieces prepared at 5-digit, 3-digit, origin 3-digit, AADC, and mixed AADC rates.

* * * * *

6.3 Marking

[Revise 6.3 to delete the carrier route references as follows:]

All automation rate pieces must be marked under 202.3.0, *Placement and Content of Mail Markings,* and 202.4.0, *Endorsement Placement.* Pieces claimed at an automation rate must bear the appropriate class marking and, except as provided in 202.3.0, *Placement and Content of Mail Markings,* and 202.4.0, *Endorsement Placement,* ''AUTO.'' Pieces not claimed at an automation rate must not bear ''AUTO'' unless single-piece rate postage is affixed or the corrective single-piece rate marking (''SNGLP'' or ''Single-Piece'') is applied.

6.4 General Preparation

[Revise 6.4 to delete carrier route references and add a new last sentence as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 6.6.

* * * * *

[Delete 6.6 and 6.7. Renumber 6.8 through 6.10 as new 6.6 through 6.8.]

6.6 Tray Preparation

[Add introductory statement about overflow trays to 6.6 as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level if it results in a full tray. Pieces must be grouped by destination. This option does not apply to origin 3-digit trays. When using this option, it must be applied to the entire mailing. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c and renumber items d through g as new items a through d. Revise renumbered item a as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed.

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.
2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

* * * * *

6.7 Tray Line 2

* * * * *

[Delete items a through c and renumber items d through i as new items a through f.]

* * * * *

240 Discount Letters and Cards: Standard Mail

243 Rates and Eligibility

[We provide the proposed rates and fees for all Standard Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for Standard Mail

* * * * *

1.7 Computing Postage for Standard Mail

* * * * *

1.7.8 Discount for Heavy Automation Letters

[Revise 1.7.8 by deleting the second-to-last sentence about automation ECR.]

* * * * *

[Delete 1.7.10.]

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.2 Defining Characteristics

3.2.1 Mailpiece Weight Limit

[Revise 3.2.1 as follows:]

All Standard Mail pieces must weigh less than 16 ounces. The following weight limits also apply to pieces mailed at Standard Mail letter rates:

a. Pieces mailed at machinable and nonmachinable letter rates may weigh up to 3.3 ounces. Letter-size pieces weighing more than 3.3 ounces and prepared as nonmachinable letters are mailable at Not Flat-Machinable rates (see 443), unless they qualify for automation letter rates or Enhanced Carrier Route high-density or saturation rates.

b. Pieces mailed at automation letter rates or Enhanced Carrier Route high-density or saturation rates may weigh up to 3.5 ounces.

* * * * *

3.3 Additional Basic Standards for Standard Mail

* * * * *

[Revise item e by adding a reference to 3.8.1 as follows:]

e. Each piece must bear the addressee's name and delivery address, including the correct ZIP Code or ZIP+4 code (see 3.8.1), unless an alternative addressing format is used subject to 602.3.0. Detached address labels may be used subject to 602.4.0.

* * * * *

3.8 ZIP Code Accuracy

3.8.1 Basic Standards

[Revise the introductory text and item a in 3.8.1 as follows:]

The ZIP Code accuracy standard is a means of ensuring that the ZIP+4 or 5-digit ZIP Code in the delivery address correctly matches the delivery address information. For the purposes of this standard, *address* means a specific address associated with a specific ZIP+4 or 5-digit ZIP Code. Effective July 2009, mailers of all discount letters, flats, and parcels must properly code and match their address lists using one of the CASS-certified address matching methods in 708.3.0 and use the correct ZIP+4 code on each mailpiece. Mailers are encouraged to begin this practice immediately. Except for mail bearing a simplified address, addresses used on pieces claiming discount rates must meet these requirements:

a. Each address and associated ZIP+4 or 5-digit ZIP Code used on the mailpieces in a mailing must be verified and corrected within 12 months before the mailing date with one of the USPS-approved methods in 3.8.2.

[Delete item b and renumber items c and d as new items b and c.]

* * * * *

4.0 Rate Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Rates

* * * * *

[Revise item b1 by deleting ''(nonletter).'']

* * * * *

[Revise item b3 by changing the base rate for Customized MarketMail as follows:]

3. Pieces mailed as Customized *MarketMail* under 705.1.0 must pay the Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

[Revise item c by deleting the last sentence about DDU rates.]

* * * * *

[Delete 4.4, Residual Shape Surcharge.]
[Replace ''presorted'' with ''nonautomation'' throughout 5.0.]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Letters

* * * * *

[Revise heading and text of 5.4 to refer to new AADC and mixed AADC rates, instead of basic rates, as follows:]

5.4 Machinable Rate Application

Machinable letters are subject only to AADC and mixed AADC rates.

5.4.1 AADC Rate

The AADC rate applies to qualifying letter-size machinable pieces (see 201.1.0, *Physical Standards for Machinable Letters and Cards*) in quantities of 150 or more pieces prepared in AADC trays for a single AADC (see L801).

5.4.2 Mixed AADC Rate

The mixed AADC rate applies to qualifying letter-size machinable pieces that the mailer prepares in mixed AADC trays, except for pieces placed in mixed AADC trays in lieu of overflow AADC trays (see 245.5.3.2).

[Delete 5.5 and 5.6. Insert new 5.5 as follows:]

5.5 Nonmachinable Rate Application

Nonmachinable rates in 1.0 apply only to Standard Mail letter-size pieces (including card-size pieces) weighing 3.3 ounces or less that have one or more of the nonmachinable characteristics in 201.2.1. Nonmachinable letter-size pieces weighing more than 3.3 ounces are subject to Not Flat-Machinable rates (see 443).

5.5.1 5-Digit Rate

The 5-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 5-digit ZIP Code and presented in 5-digit trays under 245.5.0.

5.5.2 3-Digit Rate

The 3-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 3-digit ZIP Code and presented in 3-digit trays under 245.5.0.

5.5.3 ADC Rate

The ADC rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for an ADC and presented in ADC trays under 245.5.0.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to letter-size pieces that are subject to the nonmachinable rates and prepared in mixed ADC trays.

[Revise heading in 6.0 as follows:]

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

6.1.1 Optional Preparation

[Revise 6.1.1 by deleting the last sentence about automation basic carrier route.]

* * * * *

6.1.2 Basic Eligibility Standards

* * * * *

[Revise item b by deleting the second sentence about automation basic carrier route.]

* * * * *

6.1.3 Maximum Weight for Enhanced Carrier Route Letters

[Revise 6.1.3 by deleting the reference to automation carrier route as follows:]

Maximum weight for Standard Mail Enhanced Carrier Route high density and saturation pieces: 3.5 ounces (0.2188 pound) (see 201.3.13.4, *Heavy Letter Mail,* for pieces heavier than 3 ounces).

* * * * *

6.2 Carrier Route Accuracy

6.2.1 Basic Standards

* * * * *

[Revise item a by deleting the last sentence.]

* * * * *

[Delete 6.6, Automation ECR Standards.]

* * * * *

7.0 Eligibility Standards for Automation Rate Standard Mail

* * * * *

7.3 Rate Application for Automation Letters

* * * * *

[Revise items a through d to accommodate an option to overflow trays as follows:]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for that rate is optional. Pieces placed in full 3-digit/scheme trays in lieu of 5-digit/scheme overflow trays are eligible for 5-digit rates (see 245.7.5).

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays in lieu of 3-digit/scheme overflow trays are eligible for 3-digit rates (see 245.7.5).

c. Groups of fewer than 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays in lieu of AADC overflow trays also are eligible for AADC rates (see 245.7.5).

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 7.3c.

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.2 Definitions of Mailings

* * * * *

[Delete item b1 about automation ECR. Renumber items b2 through b8 as new items b1 through b7.]

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Revise item b as follows:]

b. A *full letter tray* is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[Revise the last sentence in item e as follows:]

e. * * * When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme trays, then prepare all possible 5-digit trays.

[Revise item f by adding a new last sentence as follows:]

f. * * * When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme trays, then prepare all possible 3-digit trays.

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

* * * * *

[Revise item c by deleting ''and for Standard Mail pieces where the mailer has requested ''manual only'' processing.'' Revise item d by deleting the second sentence.]

* * * * *

[Revise heading in 5.0 as follows:]

5.0 Preparation for Nonautomation Letters

* * * * *

5.2 Marking

[Revise 5.2 by deleting ''AUTOCR'' in the last sentence.]

* * * * *

[Delete 5.3. Renumber current 5.4 and 5.5 as new 5.3 and 5.4.]

5.3 Machinable Preparation

5.3.1 Machinable Bundling

* * * * *

[Delete item b. Renumber item c as new item b.]

* * * * *

5.3.2 Traying and Labeling

[Replace the first sentence in 5.3.2 with new text as follows:]

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays. * * *

* * * * *

[Delete items a through c. Renumber items d and e as new items a and b and revise as follows:]

a. AADC (required); 150-piece minimum (overflow allowed); labeling: * * *

* * * * *

b. Mixed AADC (required); no minimum; labeling: * * *

* * * * *

5.4 Nonmachinable Preparation

5.4.1 Nonmachinable Bundling

[Revise renumbered 5.4.1 to delete the fourth sentence about manual processing.]

* * * * *

5.4.2 Traying and Labeling

[Revise introductory text in 5.4.2 and items a through c as follows:]

Overflow trays are not allowed. Preparation sequence, tray size, and labeling:

a. 5-digit (required); 150-piece minimum; labeling: * * *

* * * * *

b. 3-digit (required); 150-piece minimum; labeling: * * *

* * * * *

c. ADC (required); 150-piece minimum; labeling: * * *

* * * * *

6.0 Preparation for Enhanced Carrier Route Letters

6.1 Basic Standards

[Revise 6.1 by deleting ''(Enhanced Carrier Route automation rate mailings must be prepared under 7.0)'' in the introductory text.]

* * * * *

6.4 Carrier Route Bundle Preparation

* * * * *

[Revise item a as follows:]

a. Mailers must prepare only carrier route bundles, except under 6.7. Carrier route bundles are not permitted in full carrier route trays, except for card-size pieces.

* * * * *

[Revise heading of 6.6 as follows:]

6.6 General Traying and Labeling

* * * * *

[Renumber 6.7 through 6.9 as new 6.8 through 6.10. Insert new 6.7 as follows:]

6.7 Traying and Labeling for Enhanced Carrier Route Letters for ZIP Codes Identified in the City State Product

Mailers preparing automation-compatible, barcoded ECR letters that weigh up to 3 ounces for ZIP Codes identified with a ''C'' or a ''D'' in the Carrier Route indicators in the USPS City State Product must make full carrier route and 5-digit carrier routes trays. Except for card-size pieces, pieces must not be bundled. Group pieces together by carrier route in 5-digit and 3-digit carrier routes trays. If pieces for one carrier route do not result in a full tray, mailers must combine pieces for more than one route to make full 5-digit carrier routes trays, grouping pieces together by carrier route. If pieces for multiple carrier routes do not result in a full 5-digit tray, mailers must combine pieces for more than one 5-digit ZIP Code to make 3-digit carrier routes trays, grouping pieces together by carrier route. If pieces fill more than one tray but do not fill an additional tray, mailers must place excess pieces in a tray at the next sortation level. Preparation sequence, tray size, and labeling:

a. Carrier route: required; full trays only, no overflow.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: for saturation, ''STD LTR BC WSS,'' followed by route type and number; for high density, ''STD LTR BC WSH,'' followed by route type and number; for basic, ''STD LTR BC LOT,'' followed by route type and number.

b. 5-digit carrier routes: required; full trays only, no overflow, no bundling.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: ''STD LTR 5–D CR–RT BC.''

c. 3-digit carrier routes: required; bundling required in less than full trays.

1. Line 1: city, state, and 3-digit ZIP Code prefix shown in L002, Column A, that corresponds to 3-digit ZIP Code prefix on mail.

2. Line 2: ''STD LTR 3–D CR–RT BC.''

* * * * *

7.0 Preparation for Automation Rate Letters

* * * * *

7.2 Mailings

[Restructure 7.2 by deleting the introductory text and item b. Make item a the new text.]

* * * * *

7.3 Marking

[Revise 7.3 by deleting the parenthetical phrase in the second sentence and deleting ''AUTOCR'' in the last sentence.]

* * * * *

7.4 General Preparation

[Revise 7.4 to delete carrier route references and add a new last sentence as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 7.5.

* * * * *

[Delete 7.5 and 7.6 about carrier route trays and pieces. Renumber 7.7 through 7.9 as new 7.5 through 7.7.]

7.5 Tray Preparation

[Add new first, second, and third sentences about overflow trays to renumbered 7.5 as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level if it results in a full tray. Pieces must be grouped by destination. When using this option, it must be applied to the entire mailing. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c about carrier routes trays. Renumber items d through

g as new items a through d. Revise renumbered item a to require 5-digit/scheme trays for rate as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed; for Line 1, label as follows:

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

* * * * *

7.6 Tray Line 2

* * * * *

[Delete items a through c about carrier routes; renumber items d through i as new items a through f.]

* * * * *

246 Enter and Deposit

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

[Revise 4.2 to allow pieces placed in AADC trays in lieu of in 3-digit trays under 245.7.5 to be eligible for DSCF rates, as follows:]

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for DSCF rates when deposited at a DSCF (or USPS-designated facility); addressed for delivery within that SCF's service area; and placed in a tray that is labeled to that DSCF, to the AADC that includes that DSCF under the preparation option in 245.7.5, or to a postal facility within its service area. See 5.2 for additional DSCF rate eligibility for letters.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

[Revise 5.2 to reorganize text and eliminate the DDU entry discount as follows:]

Letter-size mailpieces are not eligible for a destination delivery unit (DDU) discount. Mailers may deposit mail at a DDU under all of the following conditions:

a. Mailers may deposit letter-size pieces that meet the standards in 2.0 and 5.0 at a DDU when:

1. Those pieces are addressed for delivery within that facility's service area (enhanced carrier route only).

2. The pieces are placed in properly prepared and labeled carrier route trays or 5-digit carrier routes trays, or on pallets under 705.8.0.

3. The pieces are eligible for and claimed at a carrier route rate.

b. Letter-size mailpieces eligible for DDU entry under 5.2a are eligible for DSCF rates under either of these conditions:

1. The pieces are prepared with simplified addresses under 602.3.2.

2. Mailers may deposit only one mailing (of fewer than 2,500 pieces) per day. The annual presort mailing fee must be paid at the office of deposit.

* * * * *

300 Discount Mail: Flats

301 Physical Standards

1.0 Physical Standards for Flats

1.1 General Definition of Flat-Size Mail

* * * * *

[Add an exception for Periodicals mail in item b as follows:]

b. Not more than 15 inches long, or more than 12 inches high, or greater than ¾ inch thick, except for Periodicals mail under 707.25.3.

[Replace items c and d with new items c and d as follows:]

c. Rectangular.

d. Other size or weight standards may apply to mail claimed at certain rates, mail addressed to certain APOs and FPOs, and mail sent by the Department of State to U.S. government personnel abroad.

* * * * *

[Insert new 1.3 through 1.6 as follows:]

1.3 Shape

Each flat-size piece must be rectangular. See 2.0 for additional standards by class of mail.

1.4 Flexibility

Flat-size pieces must meet minimum flexibility criteria. Test flexibility as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a central point about an inch off the edge of the surface, exerting a steady pressure.

3. The piece is flexible if it can bend at least 2 inches without being damaged.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a central point about an inch off the edge of the surface, exerting a steady pressure.

3. The piece is flexible if it can bend at least 1 inch without being damaged.

[Insert new 1.5 as follows:]

1.5 Uniform Thickness

The contents of a flat-size mailpiece must remain uniformly thick so that the dimensions of the envelope, wrapper, or sleeve remain constant. If the contents are of irregular thickness or significantly smaller than the envelope, wrapper, or sleeve, those contents must be secured to prevent shifting within the wrapping during processing and surrounded with material or padding to ensure that the mailpiece remains uniformly thick.

[Insert new 1.6 as follows:]

1.6 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 1.3 through 1.5 are not eligible for flat-size rates and must pay applicable rates as follows:

a. First-Class Mail—parcel rates.

b. Standard Mail—Not Flat-Machinable or parcel rates.

c. Bound Printed Matter—parcel rates.

[Revise the heading of 2.0 to delete "Presorted."]

2.0 Physical Standards for Nonautomation Flats

2.1 First-Class Mail

[Revise 2.1 as follows:]

These additional standards apply to First-Class Mail flat-size pieces:

a. First-Class Mail cannot exceed 13 ounces. First-Class Mail weighing more than 13 ounces is Priority Mail.

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and pay the applicable parcel rate.

* * * * *

2.2 Standard Mail

2.2.1 Basic Physical Standards

[Revise the introductory text as follows:]

These additional standards apply to Standard Mail flat-size pieces:

* * * * *

[Delete item b. Insert new item b as follows:]

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels or Not Flat-Machinable pieces and pay the parcel or Not Flat-Machinable rates (see 401).

* * * * *

[Delete current Exhibit 2.2.1b.]

* * * * *

2.3 Bound Printed Matter

2.3.1 General Standards

[Delete item c in 2.3.1. Renumber items a and b as new items b and c. Revise

the introductory text and insert new item a as follows:]

These additional standards apply to Bound Printed Matter:

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and pay the applicable parcel rate.

* * * * *

2.4 Media Mail

* * * * *

[Delete item c. Renumber items a and b as new items b and c. Insert new item a as follows:]

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

2.5 Library Mail

* * * * *

[Delete item c. Renumber items a and b as new items b and c. Insert new item a as follows:]

a. Flat-size pieces that do not meet the flexibility standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

3.0 Physical Standards for Automation Flats

3.1 Basic Standards for Automation Flats

[Revise 3.1 as follows:]

Flat-size pieces claimed at automation rates must meet the standards in 3.0 and the eligibility standards for the class of mail and rate claimed. Pieces prepared with polywrap film must meet the standards in 3.4.

* * * * *

[Revise heading of 3.3 as follows:]

3.3 Additional Criteria for Automation Flats

[Revise the title and text of 3.3.1 as follows:]

3.3.1 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is at the bottom of the piece and any intermediate bound or folded edge is to the right.

3.3.2 Shape and Size

[Revise 3.3.2 to specify the minimum and maximum dimensions as follows:]

Each flat-size piece must be rectangular. The following minimum and maximum dimensions apply to First-Class Mail, Standard Mail, Periodicals (except under 707.25.3), and Bound Printed Matter pieces:

1. Minimum height is 5 inches. Maximum height is 12 inches.

2. Minimum length is 6 inches. Maximum length is 15 inches.

3. Minimum thickness is 0.009 inch. Maximum thickness is 0.75 inch.

* * * * *

[Revise heading and text of 3.3.4 to delete standards for turning ability and add new standards for flexibility as follows:]

3.3.4 Flexibility

An automation flat-size mailpiece must be flexible (see 1.4) and must meet maximum deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. The piece is automation-compatible if it does not droop more than 4 inches.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. The piece is automation-compatible if it does not droop more than 2 inches.

[Delete 3.4 to remove the standards for UFSM 1000 flats. Renumber 3.5 through 3.9 as new 3.4 through 3.8.]

3.4 Polywrap Coverings

[Revise heading and text of renumbered 3.4.1 as follows:]

3.4.1 Polywrap Films and Similar Coverings

When mailers use polywrap film or similar material to enclose flat-size mailpieces claimed at automation rates, the material must meet the standards in 3.4. Film approved for use under 3.4.5 must meet the specifications in Exhibit 3.4.1 as follows:

a. Films or similar coverings must meet all eight properties in Exhibit 3.4.1.

b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.

3.4.2 Wrap Direction and Seam Placement

* * * * *

[Revise item a as follows:]

a. The wrap direction must be around the longer axis of the mailpiece, with the seam parallel to that axis. The longer axis is always parallel to the length of the mailpiece.

[Revise the first sentence in item b as follows:]

b. The preferred seam placement is on the nonaddressed side of the mailpiece.

* * *

3.4.3 Overhang

[Revise 3.4.3 by deleting item b and restructuring the text as follows:]

For purposes of the polywrap standards for overhang (selvage) only, the top edge of the mailpiece is one of the two physically longer edges of the piece, regardless of address orientation and whether bound or unbound. Any polywrap overhang (selvage) around the four edges of the mailpiece (top, bottom, and left and right sides) must meet these standards:

a. When the mailpiece contents are totally positioned at the bottom of the polywrap, the overhang must not be more than 0.5 inch at the top of the mailpiece.

b. When the mailpiece contents are totally positioned to the left or to the right side of the polywrap, the overhang must not be more than 1.5 inches on the opposite side.

c. The polywrap covering must not be so tight that it bends the mailpiece.

[Delete 3.4.4.]

* * * * *

3.8 Uniformity and Exterior Format

3.8.1 General

[Revise 3.8.1 by adding a reference to 1.5 in the first sentence as follows:]

A flat-size mailpiece prepared and claimed at automation rates must be uniformly thick (see 1.5). * * *

* * * * *

[Delete 3.8.3 (this information was relocated to 1.5). Renumber 3.8.4 as new 3.8.3.]

* * * * *

302 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Mail Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

* * * * *

[Revise items b and b3 as follows:]

b. Other Markings. Mailers may place rate-specific markings as follows:

* * * * *

3. If preceded by two asterisks (**), the ''AUTO,'' ''PRESORTED'' (or ''PRSRT''), ''CUSTOMIZED MARKETMAIL'' (or ''CUST MKTMAIL'' or ''CMM''), or ''Single-Piece'' (or ''SNGLP'') markings also may be placed on the line directly above or two lines above the address in a mailer keyline or a manifest keyline, or it may be placed above the address and below the postage

in an MLOCR ink-jet printed date correction/meter drop shipment line.

* * * * *

2.1.2 Exceptions to Markings

* * * * *

[Delete ''AUTOCR'' in item b as follows:]

b. Manifest Mailings. The basic marking must appear in the postage area on each piece. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0 meets the requirement for other rate markings.

* * * * *

330 Discount Flats: First-Class Mail

333 Rates and Eligibility

[We provide the proposed rates and fees for all First-Class Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 as follows:]

Postage is based on the flat-size rate that applies to the weight of each addressed piece.

* * * * *

3.0 Rate Eligibility for First-Class Mail Flats

* * * * *

3.6 ZIP Code Accuracy

3.6.1 Basic Standards

[Revise 3.6.1 as follows:]

The ZIP Code accuracy standard is a means of ensuring that the ZIP+4 or 5-digit ZIP Code in the delivery address correctly matches the delivery address information. For the purposes of this standard, *address* means a specific address associated with a specific ZIP+4 or 5-digit ZIP Code. Effective July 2009, mailers of all discount letters, flats, and parcels must properly code and match their address lists using one of the CASS-certified address matching methods in 708.3.0 and use the correct ZIP+4 code on each mailpiece. Mailers are encouraged to begin this practice immediately. Addresses used on pieces claiming discount rates must meet these requirements:

a. Each address and associated ZIP+4 or 5-digit ZIP Code used on the mailpieces in a mailing must be verified and corrected within 12 months before the mailing date with one of the USPS-approved methods in 3.6.2.

b. If an address used on a mailpiece in a mailing at one class of mail and rate is verified and corrected with an approved method, the same address may be used during the following 12 months to meet the ZIP Code accuracy standard required for mailing at any other class of mail and rate.

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Flats

* * * * *

[Revise the heading and text in 4.3 as follows:]

4.3 Nonmachinable Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate.

* * * * *

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Flats

* * * * *

[Delete 5.2 and renumber 5.3 through 5.6 as new 5.2 through 5.5.]

* * * * *

340 Discount Flats: Standard Mail

343 Rates and Eligibility

[We provide the proposed rates and fees for all Standard Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.2 Defining Characteristics

[Revise heading and text of 3.2.1 as follows:]

3.2.1 Mailpiece Weight Limit, Shape, and Flexibility

All Standard Mail pieces must weigh less than 16 ounces. Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and pay parcel or Not Flat-Machinable rates (see 401).

* * * * *

3.8 ZIP Code Accuracy

3.8.1 Basic Standards

[Revise the introductory text and item a in 3.8.1 as follows:]

The ZIP Code accuracy standard is a means of ensuring that the ZIP+4 or 5-digit ZIP Code in the delivery address correctly matches the delivery address information. For the purposes of this standard, *address* means a specific address associated with a specific ZIP+4 or 5-digit ZIP Code. Effective July 2009, mailers of all discount letters, flats, and parcels must properly code and match their address lists using one of the CASS-certified address matching methods in 708.3.0 and use the correct ZIP+4 code on each mailpiece. Mailers are encouraged to begin this practice immediately. Except for mail bearing a simplified address, addresses used on pieces claiming discount rates must meet these requirements:

a. Each address and associated ZIP+4 or 5-digit ZIP Code used on the mailpieces in a mailing must be verified and corrected within 12 months before the mailing date with one of the USPS-approved methods in 3.8.2.

[Delete item b and renumber items c and d as new items b and c.]

* * * * *

4.0 Rate Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Rates

* * * * *

[Revise item b2 to change the rates for Customized MarketMail to the NFM rates as follows:]

2. Pieces mailed as Customized MarketMail under 705.1.0 must pay Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

* * * * *

[Revise heading and text of 4.4 as follows:]

4.4 Rigid Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and pay parcel or Not Flat-Machinable rates (see 401).

[Revise heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Flats

* * * * *

[Replace 5.3 and 5.4 with new 5.3 through 5.6 as follows:]

5.3 5-Digit Rates for Flats

The 5-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a 5-digit/scheme sack containing at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

c. In a 5-digit bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a merged

5-digit/scheme or 5-digit sack under 705.10.0.

5.4 3-Digit Rates for Flats

The 3-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable, or in a 3-digit/scheme bundle of 10 or more pieces; properly placed in a 3-digit sack of at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 3-digit/scheme bundle of 10 or more pieces.

5.5 ADC Rates for Flats

ADC rates apply to flat-size pieces:

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC sack of at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10 through 705.13, in an ADC bundle of 10 or more pieces; properly placed on an ADC pallet.

5.6 Mixed ADC Rates for Flats

Mixed ADC rates apply to flat-size pieces in bundles that do not qualify for 5-digit, 3 digit, or ADC rates; placed in mixed ADC sacks or on ASF, BMC, or mixed BMC pallets under 705.8.0.

* * * * *

7.0 Additional Eligibility Standards for Automation Standard Mail Flats

* * * * *

7.2 Rate Application

[Revise 7.2 as follows:]

Automation rates apply to each piece properly sorted into qualifying groups:

a. The 5-digit rate applies to flat-size pieces in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

b. The 3-digit rate applies to flat-size pieces in a 3-digit/scheme bundle of 10 or more pieces.

c. The ADC rate applies to flat-size pieces in an ADC bundle of 10 or more pieces.

d. The mixed ADC rate applies to flat-size pieces in mixed ADC bundles (no minimum).

* * * * *

345 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Revise the first sentence in items c and K as follows:]

c. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* * * *

* * * * *

k. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* * * *

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Revise item f as follows:]

f. A *5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0* yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats, then prepare all possible 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item h by replacing ''Presorted'' with ''nonautomation'' in the first sentence and ''irregular parcels'' with ''nonmachinable parcels'' in the fifth sentence.]

* * * * *

[Revise item n as follows:]

n. A *3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0* yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats, then prepare all possible 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise 5.0 to change ''presorted'' flats to ''nonautomation'' flats throughout.]

5.0 Preparation for Nonautomation Flats

5.1 Basic Standards

* * * * *

[Revise item a as follows:]

a. All pieces must be in the flat-size processing category.

[Revise item b by deleting ''AUTOCR.''']

* * * * *

5.3 Bundling and Labeling

[Add a new first sentence to 5.3 as follows:]

Only pieces meeting the automation-compatibility criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

[Revise items a and b as follows:]

a. 5-digit/scheme (required), see definition in 1.4f.

b. 3-digit/scheme (required), see definition in 1.4n.

* * * * *

5.7 Sacking and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme for pieces meeting the automation-compatibility criteria in 301.3.0 (required), see definition in 1.4f; 125-piece or 15-pound minimum; labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces. (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLTS 5D SCH NON BC.'' For 5-digit sacks, ''STD FLTS 5D NON BC.''

* * * * *

7.0 Preparation for Automation Rate Flats

[Delete 7.4. Renumber 7.5 through 7.9 as new 7.4 through 7.8.]

7.4 Standard Mail Bundle Preparation

7.4.1 Bundling and Labeling

* * * * *

[Revise item a to require 5-digit/scheme preparation as follows:]

a. 5-digit/scheme (required); see definition in 1.4f * * *

* * * * *

[Delete item b. Renumber item c as new item b and revise to require 3-digit scheme preparation as follows:]

b. 3-digit/scheme (required); see definition in 1.4n * * *

* * * * *

[Delete current item d. Renumber items e and f as new items c and d.]

* * * * *

[Delete renumbered 7.4.2. Renumber 7.4.3 and 7.4.4 as new 7.4.2 and 7.4.3.]

7.4.3 Sacking and Labeling

* * * * *

[Revise item a in renumbered 7.4.3 as follows:]

a. 5-digit/scheme (required containing 5-digit scheme bundles only; see definition in 1.4f); 125-piece or 15-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLTS 5D SCH BC.'' For 5-digit sacks, ''STD FLTS 5D BC.''

[Delete item b. Renumber items c though f as items b through e.]

* * * * *

[Delete current 7.6; renumber current 7.7 through 7.9 as new 7.5 through 7.7 Revise renumbered 7.5 through 7.7 by replacing ''presorted'' with ''nonautomation'' throughout.]

7.7 Exception—Automation and Nonautomation Pieces on Pallets

[Replace ''nonletter'' with ''flat-size'' throughout renumbered 7.7.]

* * * * *

360 Discount Flats: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 360. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make following additional changes:]

363 Rates and Eligibility

[We provide the proposed rates and fees for all Bound Printed Matter services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for Bound Printed Matter

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Nonpresorted Bound Printed Matter Rates

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must pay the applicable parcel rate based on weight and zone.

[Revise the heading of renumbered 1.4 as follows:]

1.4 Discount Bound Printed Matter Rates

* * * * *

[Insert new 1.4.3 as follows:]

1.4.3 Rigid Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate based on weight and zone.

* * * * *

3.0 Basic Standards for Bound Printed Matter Flats

* * * * *

3.3 ZIP Code Accuracy

3.3.1 Basic Standards

[Revise the introductory text and item a in 3.3.1 as follows:]

The ZIP Code accuracy standard is a means of ensuring that the ZIP+4 or 5-digit ZIP Code in the delivery address correctly matches the delivery address information. For the purposes of this standard, *address* means a specific address associated with a specific ZIP+4 or 5-digit ZIP Code. Effective July 2009, mailers of all discount letters, flats, and parcels must properly code and match their address lists using one of the CASS-certified address matching methods in 708.3.0 and use the correct ZIP+4 code on each mailpiece. Mailers are encouraged to begin this practice immediately. Except for mail bearing a simplified address, addresses used on pieces claiming discount rates must meet these requirements:

a. Each address and associated ZIP+4 or 5-digit ZIP Code used on the mailpieces in a mailing must be verified and corrected within 12 months before the mailing date with one of the USPS-approved methods in 3.3.2.

[Delete item b and renumber items c and d as new items b and c.]

* * * * *

365 Mail Preparation

1.0 General Information for Mail Preparation

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1.3 Terms for Presort Levels

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[Revise the first sentence in items c and h as follows:]

c. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* * * *

* * * * *

h. 3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0: * * *

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Revise item e for 5-digit scheme sort as follows:]

e. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item g for 3-digit scheme sort as follows:]

g. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an optional endorsement line (OEL) under 708.7.0. Three-digit scheme bundles are placed in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

5.0 Preparation for Presorted Flats

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5.2 Bundling

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5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

Only pieces meeting the automation-compatibility criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

[Revise items a and b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit scheme (required); red Label 5 or optional endorsement line (OEL). See definition in 1.4e.

b. 3-digit scheme (required); green Label 3 or OEL. See definition in 1.4g.

5.3 Sacking

* * * * *

5.3.5 Sacking and Labeling

* * * * *

[Revise items a and a1 as follows:]

a. 5-digit/scheme for pieces meeting the automation-compatibility criteria in 301.3.0 (see 1.4e) (required), minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLTS 5D SCH NON BC.'' For 5-digit sacks, ''PSVC FLTS 5D NON BC.''

* * * * *

7.0 Preparation for Barcoded Flats

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7.3 Bundling

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7.3.2 Bundle Preparation

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[Revise items a and b as follows to make 5-digit and 3-digit schemes required. Delete item d and renumber items e and f as new items d and e.]

a. 5-digit/scheme: (required); minimum 10 pieces or 10 pounds, maximum weight 20 pounds; optional endorsement line (OEL) required. See definition in 1.4e.

b. 3-digit/scheme (required); minimum 10 pieces or 10 pounds, maximum weight 20 pounds; OEL required. See definition in 1.4g.

* * * * *

7.3.3 Scheme Bundle Preparation

[Revise 7.3.3 as follows:]

See 1.4e and 1.4g for additional standards for pieces prepared in scheme bundles.

7.4 Sacking

7.4.1 Sack Preparation and Labeling

* * * * *

[Revise item a as follows. Delete item b and renumber items c through f as new items b through e.]

a. 5-digit/scheme (see 1.4e) (required), minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: ''PSVC FLTS 5D SCH BC.''

* * * * *

366 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, and Barcoded Mailings

* * * * *

[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, stations, or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.17.0, *Metered Mail Drop Shipment.*

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station, or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

* * * * *

370 Discount Flats: Media Mail

373 Rates and Eligibility

[We provide the proposed rates and fees for all Media Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for Media Mail

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Rigid Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate based on weight and entry.

* * * * *

375 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

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[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A 3-digit scheme sort for flats meeting the automation-compatibility

standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an optional endorsement line (OEL) under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

5.0 Preparation for Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

Only pieces meeting the automation-compatibility criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

[Revise items a and b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); red Label 5 or optional endorsement line (OEL). See definition in 1.4c.

b. 3-digit/scheme (required); green Label 3 or OEL. See definition in 1.4d.

5.3 Sacking

* * * * *

5.3.2 Sacking and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme for pieces meeting the automation-compatibility criteria in 301.3.0 (see 1.4c) (optional, but required for 5-digit rate), minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, '' PSVC FLTS 5D SCH NON BC.'' For 5-digit sacks, ''PSVC FLTS 5D NON BC.''

* * * * *

380 Discount Flats: Library Mail

383 Rates and Eligibility

[We provide the proposed rates and fees for all Library Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for Library Mail

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Rigid Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate based on weight and entry.

* * * * *

385 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an optional endorsement line (OEL) under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

5.0 Preparation for Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

Only pieces meeting the automation-compatibility criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

[Revise items a and b as follows to make 5-digit and 3-digit schemes required:]

a. 5-digit scheme (optional, but required for 5-digit rate); red Label 5 or optional endorsement line (OEL). See definition in 1.4c.

b. 3-digit scheme (required); green Label 3 or OEL. See definition in 1.4d.

5.3 Sacking

* * * * *

5.3.2 Sacking and Labeling

* * * * *

[Revise items a and a1 as follows:]

a. 5-digit/scheme for pieces meeting the automation-compatibility criteria in 301.3.0 (see 1.4c) (optional, but required for 5-digit rate), minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, '' PSVC FLTS 5D SCH NON BC.'' For 5-digit sacks, '' PSVC FLTS 5D NON BC.''

* * * * *

400 Discount Mail: Parcels

[Change the terminology from ''irregular'' parcels to ''nonmachinable'' parcels and from ''IRREG'' to ''NON MACH'' throughout 400.]

401 Physical Standards

1.0 Physical Standards for Parcels

[Revise the heading of 1.1 as follows:]

1.1 Processing Categories

[Revise the first sentence of 1.1 as follows:]

USPS categorizes parcels into one of three mail processing categories: machinable, nonmachinable, or outside parcel. * * *

* * * * *

1.5 Machinable Parcels

* * * * *

[Delete 1.5.4, Exclusions.]

* * * * *

2.0 Additional Physical Standards by Class of Mail

2.1 First-Class Mail Parcels

* * * * *

[Delete current 2.1.2 and replace with new 2.1.2 as follows:]

2.1.2 Surcharge

Unless prepared in 5-digit sacks or paid at a single-piece rate, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels do not bear a UCC/EAN 128 or POSTNET barcode.

b. The parcels weigh less than 2 ounces.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

[Revise the heading of 2.2 as follows:]

2.2 Standard Mail Parcels and Not Flat-Machinable Pieces

[Revise heading and text of 2.2.1 as follows:]

2.2.1 Additional Physical Standards

Each piece must weigh less than 16 ounces.

[Revise heading and text of 2.2.2 as follows:]

2.2.2 Not Flat-Machinable Pieces

Rectangular Standard Mail pieces with any of the following characteristics must be prepared as *Not Flat-Machinable* (NFM) pieces or as parcels:

a. Rigid pieces that do not meet the flexibility criteria in 301.1.4.

b. Pieces over 15 inches long, up to a maximum of 15¾ inches long.

c. Pieces over 3/4 inch thick, up to a maximum of 1¼ inches thick.

d. Pieces less than either 5 inches high or 6 inches long (but no less than 4 inches high or 4 inches long) and between ¼ and 1¼ inches thick.

e. Nonmachinable letter-size pieces weighing more than 3.3 ounces, unless they qualify to be mailed as flats.

[Delete current 2.2.3 and replace with new 2.2.3 as follows:]

2.2.3 Surcharge

Unless prepared in 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The machinable or nonmachinable parcels do not bear a UCC/EAN 128 barcode.

b. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN 128 barcode.

c. The Not Flat-Machinable pieces weigh less than 6 ounces and do not bear a UCC/EAN 128 or POSTNET barcode.

2.3 Parcel Post

2.3.1 General Standards

* * * * *

[Revise item b as follows:]

b. An item weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth is charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

402 Elements on the Face of a Mailpiece

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2.0 Placement and Content of Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

* * * * *

[Renumber item c as new item d. Insert new item c as follows:]

c. Mark each NFM ''NOT FLAT-MACHINABLE'' or ''NFM'' in capital letters, either by including the marking in the optional endorsement line or by placing the marking immediately to the left of or below the postage area. See 402.2.1.1.

* * * * *

430 Discount Parcels: First-Class Mail

433 Rates and Eligibility

[We provide the proposed rates and fees for all First-Class Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees for First-Class Mail

* * * * *

[Revise 1.4 to change heading and text describing the surcharge as follows:]

1.4 Surcharge

Unless prepared in 5-digit/scheme sacks or paid at the single-piece rates, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels weigh less than 2 ounces.

b. The parcels do not bear a UCC/EAN 128 or POSTNET barcode.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

* * * * *

[Insert new 4.0 to describe Presorted parcel rates as follows:]

4.0 Rate Eligibility for Presorted First-Class Mail Parcels

4.1 5-Digit Rate

The 5-digit rate applies to presorted parcels in a 5-digit/scheme sack containing at least 10 pounds of parcels.

4.2 3-Digit Rate

The 3-digit rate applies to presorted parcels in a 3-digit sack containing at least 10 pounds of parcels.

4.3 ADC Rate

The ADC rate applies to presorted parcels in an ADC sack containing at least 10 pounds of parcels.

4.4 Single-Piece Rate

The single-piece rate applies to presorted parcels in a mixed ADC sack.

434 Postage Payment and Documentation

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2.0 Postage Payment for Presorted Parcels

* * * * *

2.2 Affixed Postage for Presorted First-Class Mail

* * * * *

[Revise item b to remove ''nonmachinable surcharge'' as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for additional ounce(s) or extra services.

* * * * *

435 Mail Preparation

1.0 General Information for Mail Preparation

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1.2 Definition of Mailings

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[Delete item b. Move item a into introductory text.]

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Renumber items a through e as new items b through f. Insert new item a as follows:]

a. *5-digit scheme for First-Class Mail parcels:* the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L606.

* * * * *

1.4 Preparation Definitions and Instructions

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[Revise item d as follows:]

d. The required quantity (for example, ''required at 10 pieces'') means that the unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded. Smaller quantities may be prepared only if permitted by the standards for each rate.

* * * * *

[Delete item g. Renumber item h as new item g and revise as follows:]

g. A *''logical''* presort destination represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container (sack or pallet) due to applicable preparation requirements or the size of the individual pieces.

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[Delete 2.0, Bundles, and renumber 3.0 through 5.0 as new 2.0 through 4.0.]

* * * * *

3.0 Sack Labels

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3.4 Line 2 (Content Line)

[Revise the table in renumbered 3.4 to delete the entries for ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section'', and ''Rural Route.'']

* * * * *

[Revise the heading in renumbered 4.0 as follows:]

4.0 Preparation for Presorted Parcels

* * * * *

[Revise heading and text in 4.3 to remove bundling requirement as follows:]

4.3 Bundling

Bundling is not permitted.

* * * * *

4.4 Sacking and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme (required; see definition in 1.3a); 10-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L606, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.3c for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''FCM PARCELS 5D SCH.'' For 5-digit sacks, ''FCM PARCELS 5D.''

* * * * *

440 Discount Parcels: Standard Mail

443 Rates and Eligibility

[We provide the proposed rates and fees for all Standard Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

4.0 Rate Eligibility for Standard Mail

4.1 General Information

[Revise 4.1 by deleting reference to barcode discount and reorganizing text as follows:]

All Standard Mail rates are Presorted rates. These rates apply to mailings meeting the basic standards in 2.0 through 4.0 and the corresponding standards for Presorted rates under 5.0 or Enhanced Carrier Route rates under 6.0. Destination entry discount rates are available under 446.2.0 through 446.5.0 in Enter and Deposit. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 4.2 or 4.3. Only organizations authorized by the USPS under 703.1.0 may mail at Nonprofit rates.

4.2 Minimum Per Piece Rates

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[Revise item b by deleting the text that does not apply to parcels as follows:]

b. In applying the minimum per piece rates, a mailpiece is categorized as a parcel based on the standards in 401, Physical Standards.

[Revise item c by deleting the text that does not apply to parcels and by adding 5-digit rate mail as eligible for DDU rates as follows:]

c. Individual Rates. There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the level of presort within each mailing. Mailers may claim discounted rates for destination entry mailings under 446.2.0 through 446.5.0 in *Enter and Deposit.* DDU rates are available for parcels and Not Flat-Machinable pieces entered at 5-digit, Enhanced Carrier Route, or Nonprofit Enhanced Carrier Route rates. See 1.0, *Rates and Fees for Standard Mail,* for individual per piece rates.

* * * * *

[Revise the heading and text of 4.4 as follows:]

4.4 Surcharge

Unless prepared in 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The machinable or nonmachinable parcels do not bear a UCC/EAN 128 barcode.

b. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN 128 barcode.

c. The Not Flat-Machinable pieces weigh less than 6 ounces and do not bear a UCC/EAN 128 or POSTNET barcode.

[Delete 4.5 and renumber 4.6 as new 4.5.]

4.5 Extra Services for Standard Mail

* * * * *

4.5.2 Eligible Matter

[Revise renumbered 4.5.2 as follows:]

Extra services may be used only with pieces mailed at machinable or nonmachinable parcel rates.

4.5.3 Ineligible Matter

* * * * *

[Revise item a as follows:]

a. Pieces entered as letters, flats, or NFMs.

* * * * *

[Revise the heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

* * * * *

5.2 Rate Application

[Revise 5.2 to add Not Flat-Machinable pieces and to note separate rates as follows:]

Rates for Regular and Nonprofit Standard Mail apply separately to machinable parcels, nonmachinable parcels, and Not Flat-Machinable pieces that meet the eligibility standards in 2.0 through 4.0 and the preparation standards in 445.5.0, *Preparation,* or 705.8.0, *Preparation for Pallets.*

[Delete 5.3 through 5.5. Insert new 5.3 for machinable parcel rates as follows:]

5.3 Rates for Machinable Parcels

5.3.1 5-Digit Rate

The 5-digit rate applies to qualifying machinable parcels presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of parcels.

b. On a 5-digit pallet, according to standards in 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.3.2 BMC Rate

The BMC rate applies to qualifying machinable parcels presented:

a. In an ASF or BMC sack containing at least 10 pounds of parcels.

b. On an ASF or BMC pallet, according to standards in 705.8.10.

5.3.3 Mixed BMC Rate

The mixed BMC rate applies to machinable parcels that are not eligible for 5-digit or BMC rates. Place machinable parcels at mixed BMC rates in mixed BMC sacks under 445.5.3.2 or on mixed BMC pallets under 705.8.10.

[Insert new 5.4 for nonmachinable parcel rates as follows:]

5.4 Rates for Nonmachinable Parcels

5.4.1 5-Digit Rate

The 5-digit rate applies to nonmachinable parcels (see 401.1.6) presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of parcels.

b. On a 5-digit/scheme (L606) pallet, according to 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.4.2 3-Digit Rate

The 3-digit rate applies to nonmachinable parcels (see 401.1.6) presented:

a. In a 3-digit sack containing at least 10 pounds of parcels.

b. On a 3-digit pallet, according to 705.8.10.

5.4.3 ADC Rate

The ADC rate applies to nonmachinable parcels (see 401.1.6) presented:

a. In an ADC sack containing at least 10 pounds of parcels.

b. On an ADC pallet, according to 705.8.10.4.

5.4.4 Mixed ADC Rate

The mixed ADC rate applies to nonmachinable parcels (see 401.1.6) in mixed ADC sacks.

[Insert new 5.5 for Not Flat-Machinable rates as follows:]

5.5 Rates for Not Flat-Machinable (NFM) Pieces

5.5.1 5-Digit Rate

The 5-digit rate applies to NFM pieces presented:

a. In a 5-digit/scheme sack of 10 or more pounds of pieces (bundling not permitted).

b. In 5-digit bundles of five or more pieces on pallets or in pallet boxes under 705.8.0.

c. As one or more pieces that mailers drop ship to a DDU under 446.5.0.

5.5.2 3-Digit Rates

The 3-digit rate applies to NFM pieces in 3-digit containers.

5.5.3 ADC Rate

The ADC rate applies to NFM pieces in ADC or ASF/BMC containers.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to NFM pieces in mixed ADC or mixed BMC containers.

* * * * *

445 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Revise item c to require 5-digit/scheme sort for rate eligibility as follows:]

c. A *5-digit/scheme sort for Standard Mail parcels* yields 5-digit scheme sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit sacks or pallets for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme sacks, then prepare all possible 5-digit sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume (if required), with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly.

* * * * *

2.0 Bundles

2.1 Definition of a Bundle

[Add a new fifth sentence to restrict bundling as follows:]

* * * Bundling under 445 is allowed only for carrier route bundles of parcels and 5-digit bundles of Not Flat-Machinable pieces placed on pallets or in pallet boxes (see 6.0). * * *

* * * * *

5.0 Preparation for Presorted Parcels

* * * * *

5.3 Preparation of Machinable Parcels

5.3.1 5-Digit Sacks

[Revise 5.3.1 to change the preparation of 5-digit/scheme sacks containing both machinable and nonmachinable parcels (or also containing Not Flat-Machinable pieces) to be that for machinable parcels, and to require 5-digit scheme sorting when claiming 5-digit rates, as follows:]

Mailers must prepare all possible 5-digit/scheme sacks in a mailing that includes pieces claimed at the 5-digit rate. If mailers do not prepare all 5-digit/scheme sacks when there are 10 pounds or more of mail for a destination, they may not claim the 5-digit rate for any part of the mailing. Mailers choosing to combine the preparation of either nonmachinable parcels or Not Flat-Machinable pieces (see 401.2.2.3) weighing 6 ounces or more with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers choosing to combine the preparation of Not Flat-Machinable pieces weighing 6 ounces or more with machinable parcels placed in ASF, BMC, or mixed BMC sacks must prepare the sacks under 5.3.2. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU.

5.3.2 Sacking and Labeling

* * * * *

[Revise item a to add the requirement of 5-digit/scheme sorting for pieces claiming the 5-digit rate as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate), see definition in 1.4c; 10-pound minimum except under 5.3.1; labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: ''STD MACH 5D SCHEME'' or ''STD MACH 5D SCH.''

[Delete item b; renumber items c through e as new items b through d.]

* * * * *

5.4 Preparation of Nonmachinable Parcels

[Delete 5.4.1 and 5.4.2; renumber 5.4.3 through 5.4.8 as new 5.4.1 through 5.4.6. Revise heading and text of renumbered 5.4.1 to restrict bundling of nonmachinable parcels as follows:]

5.4.1 Bundling

Bundling is not permitted, except for bundles of carrier route parcels under 6.0.

* * * * *

5.4.3 Loose Packing

[Revise renumbered 5.4.3 to delete the advance approval requirement to loose pack as follows:]

When placing nonmachinable parcels in sacks, mailers must face and pack the parcels to maintain their orientation in transit.

5.4.4 Required Sacking

[Revise renumbered 5.4.4 to change the minimum quantity per sack from 15 pounds to 10 pounds and to add NFMs as follows:]

Mailers must prepare a sack when the quantity of mail for a required presort destination reaches 10 pounds of parcels. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers choosing to combine the preparation of nonmachinable parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers may not prepare sacks containing nonmachinable and machinable parcels to other presort levels. Mailers may combine nonmachinable parcels with Not Flat-Machinable pieces weighing less than 6 ounces in sacks under 5.4.6.

* * * * *

5.4.6 Sacking and Labeling

* * * * *

[Revise item a to require 5-digit/scheme sacks and to change minimum quantity to 10 pounds as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate), 10-pound minimum, except when entered at a DDU; labeling:

1. For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. For Line 2, ''STD NONMACH 5D SCH'' or ''STD NONMACH 5D.''

[Delete item b. Renumber item c as new item b and revise as follows:]

b. 3-digit (required); 10-pound minimum; for nonmachinable parcels only:

1. For Line 1, L002, Column A.

2. For Line 2, ''STD NONMACH 3D.''

[Delete item d and renumber items e and f as new items c and d. Revise new item c as follows:]

c. ADC (required); 10-pound minimum; labeling:

1. Line 1: L603, Column B.

2. Line 2: ''STD NON MACH ADC.''

[Revise new item d as follows:]

d. Mixed ADC (required); no minimum; labeling:

1. Line 1: L604, Column B.

2. Line 2: ''STD NON MACH WKG.''

[Renumber 6.0 as 7.0. Insert new 6.0 for preparation of NFM pieces as follows:]

6.0 Preparation for Not Flat-Machinable Pieces

6.1 Basic Standards

All mailings at Regular Standard Mail and Nonprofit Standard Mail Presorted rates for NFM pieces are subject to the general preparation standards in 1.0 through 4.0. Prepare NFM pieces (see 301.2.2.3) according to the standards in 6.0 unless commingled with parcels under 445.5.3. Mark NFM pieces according to the standards in 402.2.1.1.

6.2 Bundling

Mailers may make 5-digit bundles of at least five pieces when placed on pallets or in pallet boxes under 705.8.0. No other NFM bundling is permitted.

6.3 Sacking and Labeling

6.3.1 General

Mailers may combine NFM pieces with parcels in 5-digit/scheme sacks under 445.5.3. See 6.3.2 for NFM pieces that weigh less than 6 ounces; see 6.3.3 for NFM pieces that weigh 6 ounces or more.

6.3.2 NFM Pieces Weighing Less Than 6 Ounces

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh less than 6 ounces:

a. 5-digit/scheme (optional, but required for 5-digit rate); see definition in 445.1.4c; 10-pound minimum, except when dropshipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: ''STD NFM 5D SCH.''

b. 3-digit (optional, but required for 3-digit rate); 10-pound minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

c. ADC (required); 10-pound minimum; labeling:

1. Line 1: Use L004, Column B.

2. Line 2: ''STD NFM ADC.''

d. Mixed ADC (required); no minimum; labeling:

1. Line 1: Use L009, Column B.

2. Line 2: ''STD NFM WKG.''

6.3.3 NFM Pieces Weighing 6 Ounces or More

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh less than 6 ounces:

a. 5-digit/scheme (required); see definition in 445.1.4c; 10-pound minimum, except when dropshipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: ''STD NFM 5D SCH.''

b. ASF (optional), permitted only for mail deposited at an ASF to claim DBMC rate; 10-pound minimum; labeling:

1. Line 1: L602, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, *BMC/ASF—DMBC Rate Eligibility.*

2. Line 2: ''STD NFM ASF.''

c. BMC (required); 10-pound minimum; labeling:

1. Line 1: L601, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, *BMC/ASF—DMBC Rate Eligibility.*

2. Line 2: ''STD NFM BMC.''

d. Mixed BMC (required); no minimum; labeling:

1. Line 1: ''MXD'' followed by L601, Column B information for BMC serving 3-digit ZIP Code prefix of entry post office.

2. Line 2: ''STD NFM WKG.''

* * * * *

446 Enter and Deposit

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4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

* * * * *

[Insert new item c as follows:]

c. When prepared and deposited under 705.6.3.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

[Revise 5.2 to allow 5-digit sacks of parcels to be entered at DDUs and to add ''Not Flat-Machinable'' pieces as follows:]

Pieces in a mailing that meet the standards in 2.0 and 5.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

a. Parcels in carrier route bundles sorted to carrier route sacks (nonmachinable parcels), and otherwise eligible for and claimed at a carrier route rate.

b. One or more parcels or Not Flat-Machinable pieces in 5-digit containers.

450 Discount Parcels: Parcel Post

453 Rates and Eligibility

[We provide the proposed rates and fees for all Parcel Post services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

3.0 Rate Eligibility Standards for Parcel Post

3.1 Parcel Post and Parcel Select Rate Eligibility

* * * * *

[Revise item f as follows:]

f. The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

* * * * *

[Revise item h as follows:]

h. Items weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth are charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

455 Mail Preparation

* * * * *

5.0 Standards for Barcode Discounts

5.1 Standards for Barcoded Mail

[Revise 5.1 as follows:]

The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

* * * * *

456 Enter and Deposit

* * * * *

2.0 Parcel Select

* * * * *

2.2 Rate Eligibility for Parcel Select Rates

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2.2.2 DBMC Rates

* * * * *

[Renumber items b and c as new items c and d. Insert new item b as follows:]

b. Machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address. Nonbarcoded machinable parcels are eligible only for the Intra-BMC/ASF rates.

* * * * *

2.6 Acceptance at Designated SCF—Mailer Benefit

* * * * *

[Revise item b as follows:]

b. Bound Printed Matter machinable parcels under 466.3.3 and Standard Mail parcels under 705.6.3 may be included.

* * * * *

460 Discount Parcels: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 460. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make following additional changes:]

463 Rates and Eligibility

[We provide the proposed rates and fees for all Bound Printed Matter services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

465 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

* * * * *

[Renumber items c through g as new items d through h. Insert new item c for 5-digit schemes as follows:]

c. 5-digit scheme (pallets and sacks) for Bound Printer Matter parcels: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L606.

* * * * *

5.0 Preparation for Presorted Parcels

* * * * *

5.2 Preparation for Irregular Parcels Weighing Less Than 10 Pounds

* * * * *

5.2.2 Bundling and Labeling

* * * * *

[Revise item a to require 5-digit schemes as follows:]

a. 5-digit/scheme (required); red Label 5 or optional endorsement line (OEL). See definition in 1.4c.

* * * * *

[Renumber 5.2.3 and 5.2.4 as new 5.2.4 and 5.2.5. Insert new 5.2.3 as follows:]

5.2.3 Scheme Bundle Preparation

See 1.4c for additional standards for pieces prepared in scheme bundles.

5.2.4 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC IRREG 5D SCHEME'' or ''PSVC IRREG 5D SCH.''

* * * * *

5.3 Preparation for Nonmachinable Parcels Weighing 10 Pounds or More

* * * * *

5.3.3 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC NON MACH 5D SCHEME'' or ''PSVC NON MACH 5D SCH.''

* * * * *

5.4 Preparation for Machinable Parcels Not Claiming the DBMC Rates

* * * * *

5.4.2 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

5.5 Preparation for Machinable Parcels Claiming the DBMC Rates

* * * * *

5.5.2 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

466 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, And Barcoded Mailings

* * * * *

[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, stations, or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.17.0, *Metered Mail Drop Shipment.*

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station, or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

* * * * *

3.0 Destination Bulk Mail Center (DBMC) Entry

* * * * *

3.2 Acceptance at Designated SCF—Mailer Benefit

* * * * *

[Revise item c as follows:]

c. Parcel Select machinable parcels under 456.2.6 and Standard Mail parcels under 705.6.3 may be included.

* * * * *

470 Media Mail

473 Rates and Eligibility

[We provide the proposed rates and fees for all Media Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

475 Mail Preparation

* * * * *

5.0 Preparation for Media Mail Parcels

* * * * *

5.2 Preparation for Machinable Parcels

* * * * *

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

5.3 Preparation for Nonmachinable Parcels

* * * * *

5.3.2 Bundling and Labeling

* * * * *

[Revise item a to require 5-digit schemes as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); 10-piece minimum; red Label 5 or optional endorsement line (OEL). See definition in 1.4c.

* * * * *

5.3.4 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC NON MACH 5D SCHEME'' or ''PSVC NON MACH 5D SCH.''

480 Library Mail

483 Rates and Eligibility

[We provide the proposed rates and fees for all Library Mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

485 Mail Preparation

* * * * *

5.0 Preparation for Library Mail Parcels

* * * * *

5.2 Preparation for Machinable Parcels

* * * * *

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

5.3 Preparation for Nonmachinable Parcels

* * * * *

5.3.2 Bundling and Labeling

* * * * *

[Revise item a to require 5-digit schemes as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); 10-piece minimum; red Label 5 or optional endorsement line (OEL). See definition in 1.4c.

* * * * *

5.3.4 Sacking and Labeling

* * * * *

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC NON MACH 5D SCHEME'' or ''PSVC NON MACH 5D SCH.''

* * * * *

500 Additional Services

503 Extra Services

[We provide the proposed rates and fees for all extra services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

4.0 Insured Mail

* * * * *

4.2 Basic Information

4.2.1 Description

* * * * *

[Revise item d as follows:]

d. Insured mail service provides the mailer with a mailing receipt. No record of insured mail is kept at the office of mailing. For mail insured for $200 or less, the USPS maintains delivery information (not including a signature). For mail insured for more than $200, the USPS maintains a delivery record (which includes the recipient's signature) for a specified period of time. Customers may obtain a delivery record by purchasing additional services; see 6.0 for details.

4.2.2 Eligible Matter

* * * * *

[Revise item b as follows:]

b. Standard Mail pieces prepared as machinable or nonmachinable parcels (bulk insurance only).

* * * * *

4.2.4 Additional Services

[Revise the first sentence in 4.2.4 as follows:]

Insuring an item for more than $200 allows customers to purchase restricted delivery service or return receipt service.* * *

* * * * *

[Revise item c as follows:]

c. Return receipt for merchandise (for items insured for $200 or less).

* * * * *

4.3 Mailing

* * * * *

4.3.3 Markings and Forms

* * * * *

[Revise items a and b as follows:]

a. Retail pieces insured for $200 or less: The mailer must affix a barcoded Form 3813 (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address. No signature is obtained.

b. Retail pieces insured for more than $200: The mailer must affix a barcoded Form 3813–P (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address.

* * * * *

4.3.5 Integrated Barcodes

* * * * *

[Revise items c1 and c2 as follows:]

1. Mailers may purchase insurance online for indemnity coverage of $200 or less with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS Delivery Confirmation.''

2. Mailers may purchase insurance online for indemnity coverage of more than $200, up to $500, with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS Insured.''

* * * * *

4.3.7 Receipt

* * * * *

[Revise items a1 and a2 as follows:]

1. Form 3813 when the insurance coverage is $200 or less.

2. Form 3813–P when the insurance coverage is more than $200.

* * * * *

4.5 Delivery

[Revise the first sentence of 4.5 and add a new second sentence as follows:]

An item insured for $200 or less is delivered as ordinary mail and receives a delivery scan. An item insured for more than $200 receives a delivery scan and the recipient's signature.* * *

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

* * * * *

6.2.2 Eligible Matter

* * * * *

[Revise items b, c, and d to replace old value of $50 with new value of $200. Further revise item c to remove reference to residual shape surcharge and insert text about preparation as machinable or nonmachinable parcels as follows:]

b. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

c. Standard Mail prepared as machinable or nonmachinable parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

d. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

6.3 Obtaining Service

* * * * *

6.3.2 After Mailing

[Revise first sentence of 6.3.2 to replace old value of $50 with new value of $200 as follows:]

The mailer may request a delivery record after mailing for Express Mail, Certified Mail, Registered Mail, COD mail, and mail insured for more than $200. * * *

* * * * *

7.0 Restricted Delivery

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Eligible Matter

* * * * *

[Revise items a, b, and c to replace old value of $50 with new value of $200. Further revise item b to remove reference to residual shape surcharge and insert text about preparation as machinable or nonmachinable parcels as follows:]

a. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

b. Standard Mail prepared as machinable or nonmachinable parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

c. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

8.0 Return Receipt for Merchandise

* * * * *

8.2 Basic Information

* * * * *

8.2.2 Eligible Matter

[Revise 8.2.2 as follows:]

Return receipt for merchandise is available for merchandise sent as Priority Mail, Standard Mail parcels, and Package Services.

* * * * *

8.2.4 Additional Services

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[Revise item b to replace old value of $50 with new value of $200 as follows:]

b. Insurance (for up to $200).

* * * * *

9.0 Delivery Confirmation

* * * * *

9.2 Basic Information

* * * * *

9.2.2 Eligible Matter

[Revise 9.2.2 to remove reference to Standard Mail residual shape surcharge and insert text about Standard Mail preparation as machinable or nonmachinable parcels as follows:]

Delivery Confirmation is available for First-Class Mail parcels under 401.1.0, for all Priority Mail pieces, for Standard Mail pieces prepared as machinable or nonmachinable parcels (electronic option only), and for Package Services parcels under 401.1.0. For the purposes of using Delivery Confirmation with a First-Class Mail parcel or a Package Services parcel, the parcel must meet these additional requirements:

* * * * *

9.2.6 Additional Services

* * * * *

[Revise items d and e to replace old value of $50 with new value of $200 as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or registry service.

e. Return receipt, if purchased with insurance for more than $200, COD, or registry service.

* * * * *

10.0 Signature Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the introductory text of 10.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels and Package Services parcels defined in 401.1.0, and for all Priority Mail pieces. For the purposes of using Signature Confirmation with a First-Class Mail or Package Services parcel, the parcel must meet these additional requirements:

* * * * *

10.2.6 Additional Services

* * * * *

[Revise item d to replace old value of $50 with new value of $200 as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or registry service.

* * * * *

13.0 Confirm

* * * * *

13.2 Basic Information

* * * * *

[Revise the heading and text in 13.2.7 as follows:]

13.2.7 Subscription

Confirm is available in blocks of 1 million units. By paying the user fee, subscribers receive 1 million units. The user fee and the 1 million units are valid for 1 year from the date purchased. Additional units may be purchased during the subscription period in blocks of 1 million with a declining price threshold as described in 13.1.1. Units expire when the annual fee expires. Units are redeemed for Confirm scans at the rate of one unit per First-Class Mail scan or five units per scan of other classes of mail.

* * * * *

507 Mailer Services

[We provide the proposed rates and fees for all mailer services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.] [Revise 507 to change the term ''accounting fee'' to ''account maintenance fee'' throughout the chapter.]

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

* * * * *

1.5.2 Periodicals

* * * * *

[Revise item f to remove the nonmachinable surcharge in the second-to-last sentence as follows:]

f. * * * Each returned piece is charged the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece. * * *

* * * * *

1.5.3 Standard Mail

* * * * *

[Revise the second sentence in item i as follows:]

i. * * * The weighted fee is the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece multiplied by 2.472 and rounded up to the next whole cent (if the computation yields a fraction of a cent). * * *

[Revise item j as follows:]

j. Returned pieces endorsed ''Return Service Requested'' are charged the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece.

* * * * *

1.6 Attachments and Enclosures

1.6.1 Periodicals

[Revise the first sentence in 1.6.1 as follows:]

Undeliverable Periodicals (including publications pending Periodicals authorization) with a nonincidental First-Class Mail attachment or enclosure are returned at the single-piece First-Class Mail rate for the weight and shape of the piece or Priority Mail rate for the weight and destination of the piece. * * *

1.6.2 Standard Mail

[Revise the first sentence in 1.6.2 as follows:]

Undeliverable, unendorsed Standard Mail with a nonincidental First-Class Mail attachment or enclosure is returned at the single-piece First-Class Mail rate for the weight and shape of the piece or Priority Mail rate for the weight and destination of the piece. * * *

* * * * *

3.0 Address Correction Services

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3.2 Address Change Service (ACS)

* * * * *

3.2.2 Service Options

[Revise 3.2.2 as follows:]

ACS offers three levels of service:

a. An *automated* option for letter-size mail with electronic notices processed using OneCode technology (see 3.2.6, Additional Standards—4-State Customer Barcodes).

b. An *electronic* option for all notices processed electronically, except automated notices under 3.2.2a.

c. A *manual* option for notices processed manually.

* * * * *

10.0 Merchandise Return Service

* * * * *

10.5 Additional Features

* * * * *

10.5.3 Insured Markings

[Revise 10.5.3 as follows:]

The permit holder must either leave a clear space on the merchandise return label to the right of the return address for the numbered insured label or instruct the customer to affix the

merchandise return label to the article so that the USPS acceptance employee can place the insured label on the article directly above the merchandise return label.

* * * * *

508 Recipient Services

[We provide the proposed rates and fees for all recipient services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.7 Express Mail and Accountable Mail

[Revise the introductory text of 1.1.7 to change the insurance threshold from $50 to $200 as follows:]

The following conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than $200, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

* * * * *

600 Basic Standards for All Mailing Services

[Change the terminology from ''irregular'' parcels to ''nonmachinable'' parcels throughout 600.]

* * * * *

604 Postage Payment Methods

[We provide the proposed rates and fees for all mailing services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Stamps

1.1 Postage Stamp Denominations

[Add the forever stamp to the table of types and formats of stamps.]

* * * * *

[Renumber current 1.10 through 1.12 as new 1.11 through 1.13 and remove reference to nonmachinable surcharge. Insert new 1.10 as follows:]

1.10 Additional Standards for Forever Stamps

Forever stamps are sold for the price of the current First-Class Mail single-piece 1-ounce letter rate in 133.1.5. The postage value of each forever stamp is the current First-Class Mail single-piece 1-ounce letter rate.

[Revise the heading of 1.11 as follows:]

1.11 Additional Standards for Semipostal Stamps

* * * * *

[Revise item c to remove reference to nonmachinable surcharge as follows:]

c. The postage value of each semipostal stamp is the First-Class Mail single-piece 1-ounce letter rate in 133.1.5 * * *

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.5 Where to File for Loss or Damage

* * * * *

[Add new text to item a as follows:]

a. Online at www.usps.com * * *

* * * * *

[Revise the heading of 2.0 as follows:]

2.0 Providing Proof of Missing Contents or Damage

[Revise 2.1 and 2.2 to change the requirements for proving missing contents or damage as follows:]

2.1 Missing Contents

If a claim is filed because some or all of the contents are missing, the addressee must make available the mailing container, including any wrapping, packaging, and any contents that were received, to the USPS with the claim.

2.2 Proof of Damage

If the addressee files the claim, the addressee must make available the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. If the mailer files the claim, the USPS will notify the addressee by letter to make available the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. Failure to do so will result in denial of the claim.

[Delete 2.3, Proof of Loss.]

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

[Change the terminology from ''irregular'' parcels to ''nonmachinable'' parcels and from ''IRREG'' to ''NON MACH'' for parcel preparation throughout 705.]

1.0 Customized MarketMail

* * * * *

1.2 Rates

[Revise 1.2 as follows:]

Pieces mailed as Customized *MarketMail* under 705.1.0 must pay the Regular or Nonprofit Standard Mail 5-digit nonentry rate for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

* * * * *

6.0 Combining Mailings of Standard Mail and Package Services Parcels

6.1 Combined Machinable Parcels—DBMC Entry

* * * * *

6.1.2 Basic Standards

* * * * *

[Renumber current items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

[Insert new 6.3 as follows:]

6.3 Combining Package Services and Standard Mail—Optional 3-Digit Preparation

6.3.1 Acceptance at Designated SCF—Qualification and Preparation

Mailers may deposit parcels otherwise eligible for the Package Services and Standard Mail DBMC rates (for machinable parcels) and the Standard Mail SCF rate (for nonmachinable parcels and Not Flat-Machinable pieces) at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

a. Standard Mail parcels, Not Flat-Machinable pieces, Bound Printed Matter machinable parcels, and Parcel Select machinable parcels may be included. Standard Mail parcels and Not Flat-Machinable pieces that weigh less than 2 ounces and Standard Mail parcels that are tubes, rolls, triangles, and similar pieces may not be included.

b. Mailers must prepare pieces on 3-digit pallets or in 3-digit pallet boxes, or unload and physically separate the pieces into containers as specified by the destination facility.

c. Parcel Select and Bound Printed Matter parcels are eligible for the applicable DBMC entry rate.

d. Standard Mail machinable parcels are eligible for the BMC presort level, DBMC rate; Not Flat-Machinable pieces and nonmachinable parcels are eligible for the 3-digit presort level, DSCF rate.

e. All pieces must be for delivery within the service area of the SCF where they are deposited by the mailer.

f. Postage on all zone-rated parcels deposited at the SCF is computed using the zone chart for that postal facility.

6.3.2 Documentation

Presort documentation is required for each rate claimed if the manifest does not list pieces in presort order. Separate postage statements must be prepared for the Standard Mail and Package Services pieces. Within each group, combined forms may be prepared where the standards and the forms permit. All postage statements must be provided at the time of mailing.

6.3.3 Authorization

Mailers must be authorized under 6.1.5 to prepare mailings that combine Standard Mail pieces and Package Services parcels.

6.3.4 Postage Payment

Postage for all pieces must be paid with permit imprint at the post office serving the mailer's plant under an approved manifest mailing system under 2.0.

7.0 Combining Package Services Parcels for Destination Entry

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7.2 Combining Package Services Machinable Parcels for DBMC Entry

* * * * *

7.2.2 Basic Standards

* * * * *

[Renumber current items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

8.0 Preparation for Pallets

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8.5 General Preparation

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8.5.6 Mail on Pallets

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[Revise item c to delete ''automation carrier route'' and to replace ''presorted'' with ''nonautomation'' as follows:]

c. For letter-size Standard Mail and Periodicals prepared in trays on pallets, mailers must prepare carrier route rate mail on separate 5-digit pallets (5-digit carrier routes pallets) from automation rate or nonautomation rate mail (5-digit pallets).

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.2 Standard Mail—Bundles, Sacks, or Trays

[Reorganize introductory text of 8.10.2 as follows:]

Mailers must prepare pallets under 8.0 in the sequence listed below and complete at each required level before preparing the next optional or required level. Unless indicated as optional, all sort levels are required. For mailings of sacks or trays on pallets, pallet preparation begins with 8.10.1e. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Mailers also may palletize bundles of Standard Mail flats under 10.0, 12.0, or 13.0.

* * * * *

[Revise the heading and text of 8.10.5 to add Not Flat-Machinable pieces as follows:]

8.10.5 Package Services and Standard Mail Machinable Parcels, and Not Flat Machinable Pieces Weighing 6 Ounces or More

Pallets must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. At the mailer's option, Inter-BMC/ASF and Intra-BMC/ASF Parcel Post mailings may be prepared on pallets under this section. Destination entry rates eligibility applies only to Standard Mail (see 446 for parcels and NFMs that weigh 6 ounces or more), Parcel Select (see 456), and Bound Printed Matter (see 466). Combined mailings of Standard Mail and Package Services machinable parcels also must meet the standards in 6.0. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6.

a. *5-digit scheme, required,* pallet must contain parcels or NFMs for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, 5-digit pallets are prepared under 8.10.5b.

Labeling:

1. Line 1: L606.

2. Line 2: ''STD MACH 5D,'' ''STD NFM 5D,'' or ''PSVC MACH 5D,'' as applicable; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD MACH 5D,'' ''STD NFM 5D,'' or ''PSVC MACH 5D,'' as applicable.

c. *ASF, optional, but required for DBMC rates.* Not available for the Buffalo, NY ASF in L602. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: L602.

2. Line 2: ''STD MACH ASF,'' ''STD NFM ASF,'' or ''PSVC MACH ASF,'' as applicable.

d. BMC, required. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: L601.

2. Line 2: ''STD MACH BMC,'' ''STD NFM BMC,'' or ''PSVC MACH BMC,'' as applicable.

e. Mixed BMC, optional. Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (or labeled to plant serving entry post office if authorized by processing and distribution manager).

2. Line 2: ''STD MACH WKG,'' ''STD NFM WKG,'' or ''PSVC MACH WKG,'' as applicable.

[Insert new 8.10.6 as follows:]

8.10.6 Standard Mail Nonmachinable Parcels Weighing 2 Ounces or More

Mailers who palletize nonmachinable parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below. Pallets or pallet boxes of nonmachinable parcels (except tubes, rolls, and similar pieces) weighing 2 ounces or more must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6. Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes.

a. *5-digit scheme, required.* Pallet or pallet box must contain parcels only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, prepare 5-digit pallets under 8.10.6b.

Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD NONMACH 5D; followed by ''SCHEME'' (or ''SCH'').

b. *5-digit, required.* Pallet or pallet box must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD NONMACH 5D''.

c. *3-digit, optional,* option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain parcels only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NONMACH 3D.''

d. ADC, *required.* Pallet or pallet box must contain parcels for the 3-digit ZIP Code groups in L005. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD NONMACH ADC.''

e. Mixed ADC, *optional.* Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L603, Column A.

2. Line 2: ''STD NONMACH MXD.''

* * * * *

[Insert new 8.10.7 as follows:]

8.10.7 Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces

Mailers must prepare pieces on pallets or in pallet boxes when there are 250 pounds or more of NFMs for the destination levels below. Prepare pallets or pallet boxes of NFM pieces weighing less than 6 ounces under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6.

a. *5-digit scheme, required.* Pallet or pallet box must contain NFMs only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD NFM 5D; followed by ''SCHEME'' (or ''SCH'').

b. *5-digit, required.* Pallet or pallet box must contain NFMs only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD NFM 5D''.

c. *3-digit, optional,* option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain NFMs only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

d. ADC, *required.* Pallet or pallet box must contain NFMs for the 3-digit ZIP Code groups in L005. Labeling:

1. Line 1: Use L004.

2. Line 2: ''STD NFM ADC.''

e. Mixed ADC, *optional.* Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L004, Column A.

2. Line 2: ''STD NFM MXD''.

* * * * *

8.14 Pallets of Bundles, Sacks, and Trays

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8.14.2 Standard Mail

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[Revise item a2 as follows:]

2. Mailers may include machinable parcels, nonmachinable parcels, and Not Flat-Machinable pieces on 5-digit pallets.

* * * * *

[Revise 11.0 to replace ''presorted'' with ''nonautomation'' throughout.]

11.0 Preparation of Cobundled Automation Rate and Nonautomation Rate Flats

11.1 First-Class Mail

11.1.1 Basic Standards

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[Delete item f.]

* * * * *

11.2 Periodicals

11.2.1 Basic Standards

[Revise introductory text in 11.2.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (see 707.18.4ab) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 707.22.0 and 707.25.0. Flats in the same bundle must all meet the standards in 301.3.0 or all meet the standards in 707.25.3. 5-digit scheme and 3-digit scheme bundles also must meet the additional standards in 707.18.4i and 707.18.4r. Mailing jobs (for flats meeting the criteria in 301.3.0) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions: * * *

11.2.2 Bundle Preparation

[Add two new sentences to the beginning of 11.2.2 as follows:]

Only pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

* * * * *

[Revise item b to require 5-digit scheme bundles as follows:]

b. 5-digit scheme, required * * *

* * * * *

[Revise item d to require 3-digit scheme bundles as follows:]

d. 3-digit scheme, required * * *

* * * * *

11.3 Standard Mail

11.3.1 Basic Standards

[Revise introductory text in 11.3.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (see 345.1.4u) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 345.5.0 and 345.7.0. Flats in the same bundle must all meet the standards in 301.3.0. 5-digit scheme and 3-digit scheme bundles must meet the additional standards in 345.1.4f and 345.1.4n. Mailing jobs prepared using the 5-digit scheme and/or 3-digit scheme bundle preparation (for flats meeting the criteria in 301.3.0) must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

[Delete item g. Renumber item h as new item g.]

* * * * *

11.3.2 Bundle Preparation

[Add two new sentences to the beginning of 11.3.2 as follows:]

Only pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. * * *

[Revise item a to require 5-digit scheme bundles as follows:]

a. 5-digit scheme, required: * * *

* * * * *

[Revise item c to require 3-digit scheme bundles as follows:]

c. 3-digit scheme, required: * * *

* * * * *

15.0 Plant-Verified Drop Shipment

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15.2 Program Participation

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15.2.4 Periodicals

[Revise 15.2.4 to reflect the new rate structure for Periodicals mail as follows:]

Periodicals postage must be paid at the post office verifying the copies or as

designated by the district. Postage is calculated from the destination USPS facility where deposited and accepted as mail (or from the facility where the Express Mail or Priority Mail drop shipment destinates). The publisher must ensure that sufficient funds are on deposit to pay for all shipments before their release. A publisher authorized under an alternative postage payment system must pay postage under the corresponding standards.

* * * * *

707 Periodicals

[We provide the proposed rates and fees for all Periodicals mail services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

1.0 Rates and Fees

1.1 Outside-County—Excluding Science-of-Agriculture

* * * * *

[Renumber current 1.1.3 through 1.1.5 as new 1.1.4 through 1.1.6. Insert new 1.1.3 as follows:]

1.1.3 Outside-County Container Rate

Rate per pallet, sack, or tray containing Outside-County Periodicals mail: $0.85.

The following standards apply:

a. For mailings correctly prepared in sacks on pallets under 705.8.0, mailers pay the container rate for each sack, and not for the pallet.

b. For mailings correctly prepared in bundles or trays on pallets under 705.8.0, mailers pay the container rate for each pallet, and not for the bundles or trays.

c. For mailings not presented in containers under 707.23.4, *Exception to Sacking,* mailers pay the container rate for each 5-digit ZIP Code or 5-digit scheme serviced by the DDU.

* * * * *

1.2 Outside-County—Science-of-Agriculture

* * * * *

[Renumber current 1.2.3 as new 1.2.4. Insert new 1.2.3 as follows:]

1.2.3 Outside-County Container Rate

Rate per pallet, sack, or tray containing Outside-County Periodicals mail: $0.85. The following standards apply:

a. For mailings correctly prepared in sacks on pallets under 705.8.0, mailers pay the container rate for each sack, and not for the pallet.

b. For mailings correctly prepared in bundles or trays on pallets under 705.8.0, mailers pay the container rate for each pallet, and not for the bundles or trays.

c. For mailings not presented in containers under 707.23.4, Exception to Sacking, mailers pay the container rate for each 5-digit ZIP Code or 5-digit scheme serviced by the DDU.

* * * * *

2.0 Rate Application and Computation

2.1 Rate Application

2.1.1 Rate Elements

[Revise 2.1.1 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

Postage for Periodicals mail includes a pound rate charge, a piece rate charge, an Outside-County container rate charge, and any discounts for which the mail qualifies under the corresponding standards.

2.1.2 Applying Pound Rate

[Revise 2.1.2 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

Pound rates are applied to the weight of the pieces in the mailing as follows:

a. Outside-County pound rates are based on the weight of the advertising portion sent to each postal zone (as computed from the entry office) or delivery unit zone, and the weight of the nonadvertising portion to a delivery unit zone.

b. Science-of-Agriculture Outside-County pound rates are based on the weights of the advertising portion and the nonadvertising portion of the mail sent to each postal zone (as computed from the entry office) or delivery unit zone.

c. In-County pound rates consist of a delivery unit zone rate and an unzoned rate for all other eligible copies delivered within the county of publication.

2.1.3 Computing Weight of Advertising and Nonadvertising Portions

[Revise 2.1.3 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

The pound rate charge is the sum of the charges for the computed weight of the advertising portion of copies to each zone, plus the sum of the charges for the computed weight of the nonadvertising portion of copies to each zone. The following standards apply:

a. The minimum pound rate charge for any zone to which copies are mailed is the 1-pound rate. For example, three 2-ounce copies for a zone are subject to the minimum 1-pound charge.

b. Authorized Nonprofit and Classroom publications with an advertising percentage that is 10% or less are considered 100% nonadvertising. When computing the pound rates and the nonadvertising adjustment, use ''0'' as the advertising percentage. Authorized Nonprofit and Classroom publications claiming 0% advertising must pay the nonadvertising pound rate for the entire weight of all copies to all zones.

* * * * *

3.0 Physical Characteristics and Content Eligibility

* * * * *

3.5 Mailpiece Construction

* * * * *

3.5.2 Size and Weight

[Insert new second sentence in 3.5.2 to include the maximum weight and thickness for Periodicals automation flat-size pieces as follows:]

* * * Automation flat-size pieces may not weigh more than 6 pounds or measure more than 1¼ inch thick.

* * *

* * * * *

11.0 Basic Rate Eligibility

* * * * *

11.4 Discounts

[Delete item c to eliminate the pallet discounts.]

* * * * *

15.0 Ride-Along Rate Eligibility

* * * * *

15.3 Physical Characteristics

* * * * *

[Revise item c as follows:]

c. A Periodicals piece with a Ride-Along that claims automation rates must meet the automation requirements in 201.3.0, *Physical Standards for Automation Letters and Cards,* or 25.0, *Preparing Flat-Size Automation Periodicals,* and must maintain the same processing category as before the addition of the Ride-Along. For example, if, due to the inclusion of a Ride-Along piece, an automation letter-size host piece can no longer be processed as an automation letter, then that piece must pay the Periodicals nonautomation rate for the host piece plus the Ride-Along rate or the Standard Mail rate for the attachment or enclosure.

* * * * *

17.0 Documentation

* * * * *

17.7 Additional Standards

* * * * *

[Insert new 17.7.4 as follows:]

17.7.4 Outside-County Container Rate Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in 708.1.0. The documentation must show how many trays, sacks, or pallets are required for the rates and discounts claimed, even when the mailing is presented under 707.23.4, *Exception to Sacking,* or is otherwise presented by the mailer. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone, and by entry discount (such as DDU and DSCF). If standardized documentation is not presented, the container charge is determined by dividing the total number of Outside-County pieces in the mailing by 24, and multiplying the result by the container rate charge.

18.0 General Information for Mail Preparation

* * * * *

18.3 Presort Terms

* * * * *

[Revise items c, e, and p as follows:]

c. A *full letter tray* is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

e. *5-digit scheme (bundles and sacks) for flats prepared according to 301.3.0:* the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L007.

* * * * *

p. *3-digit scheme bundles for flats prepared according to 301.3.0:* the ZIP Code in the delivery address on all pieces is one of the 3-digit ZIP Codes processed by the USPS as a single scheme, as shown in L008.

* * * * *

18.4 Mail Preparation Terms

* * * * *

[Revise items i and r as follows:]

i. A *5-digit scheme sort for flats prepared according to 301.3.0* yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007. Presorting must be performed using L007. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0.

* * * * *

r. A *3-digit scheme sort for flats prepared according to 301.3.0* yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. The 3-digit scheme sort is optional, except under 705.12.0 and 705.13.0. For 705.12.0 and 705.13.0, presorting must be performed using L008. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0.

* * * * *

22.0 Preparing Presorted Periodicals

* * * * *

22.2 Bundle Preparation

[Revise the introductory text of 22.2 as follows:]

Only pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Bundling is required before traying or sacking. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches the minimum bundle size. Smaller volumes are not permitted except mixed ADC bundles and 5-digit/scheme and 3-digit/scheme bundles prepared under 22.4. Bundling is also subject to 19.0, *Bundles.* Preparation sequence, bundle size, and labeling:

* * * * *

[Renumber item b as item c. Insert new item b as follows:]

b. 5-digit scheme (optional); six-piece minimum; red Label 5 or OEL.

* * * * *

[Renumber items d through f as new items e through g. Insert new item d as follows:]

d. 3-digit scheme (optional); six-piece minimum; green Label 3 or OEL.

* * * * *

22.6 Sack Preparation—Flat-Size Pieces and Irregular Parcels

* * * * *

[Renumber items a through g as items b through h. Insert new item a as follows:]

a. 5-digit scheme; optional; for pieces meeting the standards in 301.3.0; 24-piece minimum, fewer pieces not permitted.

1. Line 1: L007, Column B.

2. Line 2: ''PER'' or NEWS'' as applicable, followed by ''FLTS 5D SCH NON BC.''

* * * * *

22.7 Optional Tray Preparation—Flat-Size Nonautomation Pieces

[Revise the first sentence in 22.7 as follows:]

As an option, mailers may place in trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks.

* * *

* * * * *

25.0 Preparing Flat-Size Automation Periodicals

25.1 Basic Standards

25.1.1 General

[Revise 25.1.1 as follows:]

Each piece must meet the weight and size standards in 301.3.0 or in 25.3. Bundle, sack, and tray preparation are also subject to 18.0 through 21.0. Trays and sacks must bear the appropriate barcoded container labels under 708.6.0.

* * * * *

25.1.5 Bundle Preparation

* * * * *

[Revise the items a, c, and d as follows:]

a. Pieces that meet the standards in 301.3.0 must be prepared in separate bundles from pieces that meet the standards in 25.3.

* * * * *

c. Each bundle of pieces prepared under 301.3.0 and each bundle of pieces prepared under 25.3 must separately meet the bundle minimums in 25.4.

d. Presort destination bundles may contain fewer than six pieces when the mailpieces are too thick or too heavy to create a six-piece bundle. Rate eligibility is not affected if the total number of pieces bundled for a presort destination meets or exceeds the minimum for rate eligibility under 14.0.

25.1.6 Scheme Bundle Preparation

[Revise 25.1.6 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. These bundles must meet the additional standards in 18.4i or 18.4r. Pieces meeting the alternate criteria in 25.3 must not be prepared in scheme bundles.

25.1.7 Sack Preparation

[Revise 25.1.7 as follows:]

Mailers may combine bundles of pieces prepared under 301.3.0 and bundles of pieces prepared under 25.3 in the same sack.

25.1.8 Exception—Automation and Nonautomation Pieces on Pallets

[Revise the first sentence of 25.1.8 as follows:]

When the physical dimensions of the mailpieces in a Periodicals mailing meet the definition of both a letter-size piece and an automation flat-size piece, the entire job may be prepared, merged, and palletized under 705.9.0 through 705.13.0 if the applicable standards are met.* * *

* * * * *

[Renumber 25.2 and 25.3 as new 25.4 and 25.5. Insert new 25.2 and 25.3 as follows:]

25.2 Physical Standards

Each flat-size piece must be rectangular and must meet the standards in 301.3.0 or the alternative criteria in 25.3.

25.3 Alternative Criteria

25.3.1 General

Mailers may prepare automation flat-size pieces that differ in weight and thickness from the criteria in 301.3.0 according to 25.3.2 and 25.3.3. Pieces prepared under 25.3 and pieces prepared under 301.3.0 may not be combined in the same bundle. Determine length and height according to 301.3.2.

25.3.2 Weight and Size

The maximum weight for each piece is 6 pounds. The following minimum and maximum dimensions apply:

a. Minimum height is 5 inches. Maximum height is 12 inches.

b. Minimum length is 6 inches. Maximum length is 15 inches.

c. Minimum thickness is 0.009 inch. Maximum thickness is 1.25 inches.

25.3.3 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom of the piece. Unbound flat-size pieces must be at least double-folded.

25.4 Bundling and Labeling

* * * * *

[Revise items a and c in renumbered 25.4 to require scheme bundling as follows:]

a. 5-digit scheme (required for pieces meeting the standards in 301.3.0); six-piece minimum (fewer pieces permitted under 25.1.9); optional endorsement line (OEL) required.

* * * * *

c. 3-digit scheme (required for pieces meeting the standards in 301.3); six-piece minimum (fewer pieces permitted under 25.1.9); OEL required.

* * * * *

25.5 Sacking and Labeling

* * * * *

[Revise item a in renumbered 25.5 as follows:]

a. 5-digit scheme (for pieces meeting the standards in 301.3.0 only), required at 24 pieces, fewer pieces not permitted; may contain 5-digit scheme bundles only; labeling:

* * * * *

25.6 Optional Tray Preparation—Flat-Size Barcoded Pieces

[Revise the first sentence in renumbered 25.6 as follows:]

As an option, mailers may place in trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. * * *

* * * * *

26.0 Combining Multiple Editions or Publications

[Reorganize and revise 26.0 to add the definition and standards for copalletized mailings. The experimental copalletization drop-ship classifications in 709.3.0 and 709.4.0 expire, and all mailers may copalletize under 26.0 as follows:]

26.1 Description

Mailers may prepare Periodicals publications as a combined mailing by merging copies or bundles of copies to achieve the finest presort level possible or to reduce the per piece or the Outside-County container rate charge. Mailers may use one of the following methods:

a. Mailers may merge and sort together (''comail'') individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) to obtain a finer presort level.

b. Mailers may place two or more copies of different Periodicals publications (two or more titles), and/or multiple editions of the same publication in the same mailing wrapper or firm bundle and present it as one addressed piece to a single recipient to reduce the per piece charge.

c. Mailers may copalletize separately presorted bundles of different Periodicals titles and editions to achieve minimum pallet weights. Mailers do not have to achieve the finest pallet presort level possible.

26.2 Authorization

26.2.1 Basic Standards

Each publication in a combined mailing must be authorized (or pending authorization) to mail at Periodicals rates. A mailer preparing comailed or copalletized mailings under 26.1a and 26.1c must be authorized to do so by Business Mailer Support (see 608.8.1 for address). For copalletization, each mailer that sends mail to the copalletization facility also must be authorized. Requests for authorization must show:

a. The mailer's name and address.

b. The mailing office.

c. Procedures and quality control measures for the combined mailing.

d. The expected date of the first mailing.

e. A sample of the standardized documentation.

26.2.2 Denial

If the application is denied, the mailer or consolidator may file at a later date, or submit additional information needed to support the request.

26.2.3 Termination

An authorization may not exceed 2 years. Business Mailer Support may take action to terminate an authorization at any time, by written notice, if the mailer does not meet the standards.

26.3 Minimum Volume

The following minimum volume standards apply:

a. For combined mailings prepared under 26.1a, more than one Periodicals publication, or edition of a publication, are combined to meet the required minimum volume per bundle, sack, or tray for the rate claimed.

b. For combined mailings prepared under 26.1b, the minimum volume requirements in 22.0, 23.0, 201.3.0, or 25.0 apply for the rate claimed.

c. For copalletized mailings prepared under 26.1c, the minimum volume requirements for pallets in 705.8.5.3 apply for the rate claimed.

26.4 Labeling

Mailers must label all containers in a combined mailing as either ''NEWS'' (see 21.1.3) or ''PER'' as follows:

a. If at least 51% of the total number of copies in the combined mailing can qualify for ''NEWS'' treatment then all containers in the mailing are labeled ''NEWS,'' unless the mailer chooses to use ''PER.''

b. If less than 51% of the total number of copies in a combined mailing can

qualify for ''NEWS'' treatment then all containers in the mailing are labeled ''PER.''

26.5 Documentation

Each mailing must be accompanied by documentation meeting the standards in 17.0, as well as any additional mailing information requested by the USPS to support the postage claimed (such as advertising percentage and weight per copy). The following additional standards apply:

a. Presort documentation required under 708.1.0 must show the total number of addressed pieces and total number of copies for each publication and each edition in the combined mailing claimed at the carrier route, 5-digit, 3-digit, and basic rates. The mailer also must provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication and each edition claimed at any destination entry discount.

b. Copalletized mailing documentation must be presented by each title and version, segment, or edition in the mailing, or by codes representing each title and version, segment, or edition. The documentation must include presort and pallet reports showing how the copalletized pieces are prepared and where they will be entered.

26.6 Postage Statements

Mailers must prepare postage statements for a combined mailing as follows:

a. Copy weight and advertising percentage determine whether separate postage statements are required for editions of the same publication:

1. If the copy weight and advertising percentage for all editions of a publication are the same, mailers may report all the editions on the same postage statement or each edition on a separate postage statement.

2. If the copy weight or the advertising percentage is different for each edition of a publication, mailers must report each edition on a separate postage statement.

b. For a combined mailing prepared under 26.1a, mailers must prepare a separate postage statement that claims all applicable per piece and per pound charges for each publication or edition except as provided in 26.2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition and indicate that the pieces were prepared as part of a combined mailing under 26.1a.

c. For mailings under 26.1b, mailers must prepare a separate postage statement claiming the applicable per pound charges for each publication or edition in the combined mailing except as provided in 26.2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition and indicate that the copies were prepared as part of a combined mailing under 26.1b. The per piece charges must be claimed as follows:

1. If *all* copies in the combined mailing are eligible for the Classroom or Nonprofit discount, or if *all* copies are not eligible for the Classroom or Nonprofit discount, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising.

2. If a portion of the copies in the combined mailing are eligible for the Classroom or Nonprofit discount and a portion are not eligible, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

d. For copalletized mailings under 26.1c, mailers must prepare a separate postage statement for each publication in the mailing. Mailings consisting of different editions or versions of the same publication must be accompanied by one consolidated postage statement and a register of mailings.

26.7 Postage Payment

Each mailing must meet the postage payment standards in 16.0. For copalletized mailings under 26.1c, mailers must pay postage at the post office serving the facility where consolidation takes place, except that postage for publications authorized under the Centralized Postage Payment (CPP) system may be paid to the Pricing and Classification Service Center (see 608.8.4.1 for address).

26.8 Deposit of Mail

Each publication in a combined mailing must be authorized for original entry or additional entry at the post office where the mailing is entered. For copalletized mailings under 26.1c, mailers must enter each mailing at the post office serving the facility where consolidation takes place.

* * * * *

28.0 Destination Entry Rate Eligibility

28.1 Basic Standards

28.1.1 Rate Application

[Revise 28.1.1 to eliminate the pallet discounts and add the new container rate as follows:]

Outside-County addressed pieces may qualify for destination area distribution center (DADC) or destination sectional center facility (DSCF) rates under 28.2 or 28.3. Carrier route rate addressed pieces may qualify for destination delivery unit (DDU) rates under 28.4. Outside-County pieces are subject to the Outside-County container rate in 1.1.3 or 1.2.3. For all destination entry rate pieces:

a. Only one destination entry discount may be claimed for each addressed piece.

b. An individual bundle, tray, sack, or pallet may contain pieces claimed at different destination entry rates.

c. In-County carrier route rate addressed pieces may qualify for the DDU discount under 28.4.

d. The advertising and nonadvertising portions may be eligible for DADC, DSCF, or DDU pound rates based on the entry facility and the address on the piece.

* * * * *

28.2 Destination Area Distribution Center

* * * * *

28.2.3 Rates

[Revise 28.2.3 to reflect the new nonadvertising rate structure as follows:]

DADC rates include a per piece discount off the addressed piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate.

28.3 Destination Sectional Center Facility

* * * * *

28.3.3 Rates

[Revise 28.3.3 to reflect the new nonadvertising rate structure as follows:]

DSCF rates include a per piece discount off the addressed piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate.

28.4 Destination Delivery Unit

* * * * *

28.4.3 Rates

[Revise 28.4.3 to reflect the new nonadvertising rate structure as follows:]

DDU rates for Outside-County include a per piece discount off the addressed

piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate. DDU rates for In-County consist of a per piece discount off the addressed piece rate and a pound charge.

* * * * *

708 Technical Specifications

[Change the terminology from ''irregular'' parcels to ''nonmachinable'' parcels and from ''IRREG'' to ''NON MACH'' for parcel preparation throughout 708.]

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

* * * * *

[Revise item c1 as follows:]

1. Tray/sack sortation level. Periodicals documentation must also show the total number of each type of container in the mailing.

* * * * *

[Revise item c3 as follows:]

3. The number of pieces for each 5-digit ZIP Code in 5-digit/scheme bundles or trays; for each 3-digit ZIP Code in 3-digit/scheme bundles or trays; for each 3-digit/scheme in (A)ADC bundles or trays; for each (A)ADC in mixed (A)ADC bundles or trays (or, for Periodicals, origin mixed ADC trays). For automation-rate mailings prepared under the no overflow option, the number of pieces in the next higher level tray in lieu of overflow trays. For ECR letters prepared under 245.6.0, the number of pieces in carrier routes within full trays. For automation flats, regular nonautomation presort mail, and ECR Standard Mail, the number of pieces in each bundle level and presort destination.

* * * * *

1.3 Rate Level Column Headings

* * * * *

[Delete the ''Carrier Route'' entry in item a. Revise the ''3/5'' and ''Basic'' entries as follows:]

Rate	Abbreviation
* * * * * * *	
5-Digit [Standard Mail flats]	5B
3-Digit [Standard Mail flats]	3B
ADC [Standard Mail flats]	AB
Mixed ADC [Standard Mail flats]	MB
* * * * * * *	

[Delete the ''3/5'' entry in item b. Revise the ''5-Digit,'' ''3-Digit,'' and ''Basic'' entries in item b as follows:]

Rate	Abbreviation
* * * * * * *	
5-Digit [Standard Mail letters; Periodicals letters, flats, and parcels]	5D
3-Digit [Standard Mail letters; Periodicals letters, flats, and parcels]	3D
ADC [letters/cards and flats]	AD
Mixed ADC [letters/cards and flats]	MD
* * * * * * *	

[Delete the ''Basic Automation'' entry in item c.]

* * * * *

1.4 Sortation Level

* * * * *

[Revise the ''5-Digit Scheme'' entry as follows:]

Sortation level	Abbreviation
* * * * * * *	
5-Digit Scheme [barcoded and machinable letters]	5DGS
* * * * * * *	

[Revise the heading of 5.0 as follows:]

5.0 Barcoding Standards for Parcels and Not Flat-Machinable Pieces

5.1 Basic Requirements for Postal Routing Barcodes.

[Revise 5.1 as follows:]

Mailers may use a postal routing barcode on parcels and Not Flat-Machinable pieces that meet the eligibility requirements in 443.1.1 for First-Class Mail, 443.4.4 and 443.5.5 for Standard Mail, 453.3.1 for Parcel Post, 463.4.1 for Bound Printed Matter, 473.3.4 for Media Mail, or 483.3.4 for Library Mail. Each parcel must bear a properly prepared UCC/EAN Code 128 barcode symbology as described in 5.3 that accurately represents the correct ZIP Code or ZIP+4 code of the delivery address. For information on barcode placement for parcels, see 402.4.0.

* * * * *

6.0 Barcoding Standards for Container Labels

6.1 Basic Standards—Tray and Sack Labels

6.1.1 Use

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Exhibit 6.1.4 3-Digit Content Identifier Numbers

[Revise the content identifier numbers for First-Class Mail automation letters, Enhanced Carrier Route Standard Mail letters, and Not Flat-Machinable pieces.]

* * * * *

7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

[Delete the example for Carrier Route—Automation (First-Class Mail and Standard Mail).]

* * * * *

8.0 Carrier Route Information Lines

8.1 Basic Information

[Delete reference to First-Class Mail as follows:]

Bundles for individual carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units must be prepared with facing slips under 245.2.11 for Standard Mail letters, 345.2.14 for Standard Mail flats, 365.2.13 for Bound Printed Matter flats, 445.2.12 for Standard Mail parcels, 465.2.12 for Bound Printed Matter parcels, and 707.19.16 for Periodicals, optional endorsement lines under 7.0, or carrier route information lines under 8.2. These standards apply to Carrier Route Periodicals, Enhanced Carrier Route Standard Mail, and Carrier Route Bound Printed Matter mailings. Carrier route information lines may be on all pieces in a mailing, regardless of presort level.

* * * * *

709 Experimental Classifications and Rates

* * * * *

[Delete 3.0, Outside-County Periodicals Copalletization Drop-Ship Classification; 4.0, Outside-County Periodicals Copalletization Drop-Ship Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications; and 5.0, Priority Mail Flat-Rate Box. Renumber remaining sections 6.0 and 7.0 as new 3.0 and 4.0. The experimental copalletization discounts expire and are replaced by the new rate structure for Periodicals mail in 707. The Priority Mail Flat-Rate Box becomes a permanent offering in 123. We provide the proposed rates and fees for all remaining experimental services in ''Rates and Fees'' at the end of this notice, after all of the proposed mailing standards.]

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

BILLING CODE 7710–12–P

UNITED STATES POSTAL SERVICE®

Rates and Fees

R2006-1
Price Change Proposal

RETAIL RATES

Express Mail
Priority Mail
First-Class Mail
Media Mail
Library Mail
Parcel Post

DISCOUNT RATES

Letters
First-Class Mail
Standard Mail

Flats
First-Class Mail
Media Mail
Library Mail
Standard Mail
Bound Printed Matter

Parcels
First-Class Mail
Standard Mail
Bound Printed Matter
Parcel Post
Media Mail
Library Mail

Periodicals

FEES

Extra Services
Recipient Services
Mailer Services
Other Fees and Charges

Postal Explorer pe.usps.com

Retail Mail

Retail Mail: Express Mail

Express Mail

RETAIL LETTERS, FLATS, & PARCELS

Weight Not Over (pounds)	Service[1] Custom Designed	Next Day & Second Day PO to PO	Next Day & Second Day PO to Addressee
1/2[2]	$14.15	$13.85	$16.25
1	17.40	17.10	19.50
2	19.30	19.00	21.40
3	22.40	22.10	24.50
4	25.50	25.20	27.60
5	28.60	28.30	30.70
6	31.70	31.40	33.80
7	34.80	34.50	36.90
8	37.90	37.60	40.00
9	41.00	40.70	43.10
10	43.15	42.85	45.25
11	45.30	45.00	47.40
12	47.45	47.15	49.55
13	49.60	49.30	51.70
14	51.75	51.45	53.85
15	53.90	53.60	56.00
16	56.05	55.75	58.15
17	58.20	57.90	60.30
18	60.35	60.05	62.45
19	62.50	62.20	64.60
20	64.65	64.35	66.75
21	66.80	66.50	68.90
22	68.95	68.65	71.05
23	71.10	70.80	73.20
24	73.25	72.95	75.35
25	75.40	75.10	77.50
26	77.55	77.25	79.65
27	79.70	79.40	81.80
28	81.85	81.55	83.95
29	84.00	83.70	86.10
30	86.15	85.85	88.25
31	88.30	88.00	90.40
32	90.45	90.15	92.55
33	92.60	92.30	94.70
34	94.75	94.45	96.85
35	96.90	96.60	99.00
36	99.05	98.75	101.15
37	101.20	100.90	103.30
38	103.35	103.05	105.45
39	105.50	105.20	107.60
40	$107.65	$107.35	$109.75
41	109.80	109.50	111.90
42	111.95	111.65	114.05
43	114.10	113.80	116.20
44	116.25	115.95	118.35
45	118.40	118.10	120.50
46	120.55	120.25	122.65
47	122.70	122.40	124.80
48	124.85	124.55	126.95
49	127.00	126.70	129.10
50	129.15	128.85	131.25
51	131.30	131.00	133.40
52	133.45	133.15	135.55
53	135.60	135.30	137.70
54	137.75	137.45	139.85
55	139.90	139.60	142.00
56	142.05	141.75	144.15
57	144.20	143.90	146.30
58	146.35	146.05	148.45
59	148.50	148.20	150.60
60	150.65	150.35	152.75
61	152.80	152.50	154.90
62	154.95	154.65	157.05
63	157.10	156.80	159.20
64	159.25	158.95	161.35
65	161.40	161.10	163.50
66	163.55	163.25	165.65
67	165.70	165.40	167.80
68	167.85	167.55	169.95
69	170.00	169.70	172.10
70	172.15	171.85	174.25

1. Same Day Airport service is currently suspended.
2. The 1/2-pound rate is charged for matter sent in an Express Mail flat-rate envelope provided by the USPS, regardless of weight.

Retail Mail: Priority Mail

Retail Mail

Priority Mail

RETAIL LETTERS, CARDS, FLATS, & PARCELS

Weight Not Over (pounds)	Zone[1,2,3,4,5] Local, 1 & 2	3	4	5	6	7	8
1	$4.65	$4.65	$4.65	$4.65	$4.65	$4.65	$4.65
2	4.65	5.05	5.40	6.15	6.55	6.85	7.30
3	5.15	5.90	6.55	8.10	8.80	9.35	10.15
4	5.90	6.90	7.90	10.00	11.00	11.70	12.85
5	6.55	7.60	9.10	11.60	12.90	13.85	15.30
6	7.10	8.25	10.25	12.95	13.10	14.75	16.05
7	7.65	8.85	11.30	13.95	14.35	16.40	18.30
8	8.10	9.60	12.25	14.90	15.60	18.00	20.55
9	8.50	10.35	12.80	15.90	16.85	19.60	22.85
10	8.85	10.95	13.40	16.95	18.25	21.30	23.85
11	9.20	11.70	14.00	17.95	19.75	22.05	24.85
12	9.55	12.35	14.55	18.75	21.30	22.85	25.95
13	9.95	12.90	15.15	19.55	22.15	23.75	26.80
14	10.30	13.40	15.75	20.40	22.90	25.10	28.10
15	10.65	13.95	16.35	20.80	23.45	25.30	28.75
16	10.85	14.20	16.65	21.25	23.95	25.90	29.45
17	11.00	14.45	16.95	21.75	24.55	26.55	30.25
18	11.20	14.70	17.30	22.20	25.00	27.05	30.90
19	11.35	14.95	17.60	22.70	25.60	27.75	31.75
20	11.60	15.15	17.85	23.10	26.10	28.25	32.35
21	12.00	15.40	18.15	23.50	26.55	28.75	33.00
22	12.50	15.65	18.45	24.05	27.15	29.45	33.80
23	12.90	15.85	18.70	24.45	27.60	29.90	35.05
24	13.35	16.10	19.00	24.95	28.20	30.60	36.50
25	13.85	16.30	19.65	25.35	28.60	31.05	37.90
26	14.25	16.50	20.25	25.85	29.20	31.75	39.35
27	14.70	16.75	20.85	26.20	29.65	32.20	40.80
28	15.15	16.95	21.40	26.55	30.05	32.65	42.30
29	15.60	17.15	22.05	26.95	30.45	33.70	43.70
30	16.10	17.35	22.65	27.30	31.05	34.70	45.15
31	16.50	17.55	23.25	27.65	31.90	35.75	46.65
32	16.95	17.75	23.85	27.95	32.90	36.80	48.10
33	17.40	17.95	24.40	28.30	33.80	37.85	49.50
34	17.85	18.10	25.05	28.90	34.80	38.90	50.95
35	18.30	18.30	25.65	29.55	35.75	39.95	52.40
36	18.75	18.75	26.25	30.15	36.70	41.05	53.85
37	19.20	19.20	26.95	31.05	37.65	42.10	55.30
38	19.65	19.65	27.50	31.80	38.70	43.10	56.75
39	20.05	20.05	28.25	32.60	39.65	44.20	58.25
40	20.45	20.45	28.90	33.40	40.55	45.20	59.65
41	20.85	20.85	29.50	34.10	41.50	46.25	61.10
42	21.25	21.25	30.25	34.90	42.40	47.35	62.55
43	21.65	21.65	30.90	35.70	43.45	48.40	64.00
44	22.05	22.05	31.50	36.50	44.35	49.50	65.45
45	$22.45	$22.45	$32.20	$37.25	$45.30	$50.55	$66.90
46	22.85	22.85	32.90	38.00	46.25	51.60	68.35
47	23.25	23.25	33.50	38.80	47.30	52.70	69.75
48	23.65	23.65	34.25	39.60	48.25	53.75	71.25
49	24.05	24.05	34.90	40.30	49.15	54.85	72.70
50	24.40	24.40	35.55	41.10	50.10	55.90	74.15
51	24.85	24.85	36.20	41.90	51.05	56.95	75.60
52	25.20	25.20	36.90	42.70	52.10	58.00	77.05
53	25.65	25.65	37.50	43.45	53.00	59.10	78.50
54	26.00	26.00	38.15	44.25	53.90	60.10	79.90
55	26.45	26.45	38.90	45.05	54.85	61.10	81.35
56	26.80	26.80	39.50	45.75	55.90	62.20	82.85
57	27.25	27.25	40.15	46.50	56.80	63.25	84.30
58	27.60	27.60	40.85	47.30	57.75	64.30	85.70
59	28.05	28.05	41.50	48.10	58.70	65.35	87.20
60	28.40	28.40	42.15	48.90	59.70	66.40	88.65
61	28.85	28.85	42.90	49.65	60.70	67.45	90.10
62	29.20	29.20	43.50	50.45	61.60	68.50	91.50
63	29.65	29.65	44.20	51.25	62.55	69.55	92.95
64	30.00	30.00	44.85	52.05	63.50	70.55	94.45
65	30.45	30.45	45.45	52.70	64.50	71.65	95.90
66	30.80	30.80	46.15	53.50	65.40	72.70	97.30
67	31.25	31.25	46.90	54.30	66.35	73.70	98.80
68	31.60	31.60	47.50	55.10	67.30	74.80	100.20
69	32.05	32.05	48.15	55.90	68.30	75.85	101.65
70	32.45	32.45	48.90	56.65	69.25	76.90	103.10

1. Parcels addressed for delivery to zones 1-4 (including local) that weigh less than 20 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable rate for a 20-pound parcel (balloon rate).
2. Parcels addressed for delivery to zones 5-8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight or the dimensional weight (as calculated in 123.1.4), whichever is greater.
3. For keys and ID devices that weigh:
   Up to 13 ounces, refer to retail First-Class Mail rates.
   More than 13 ounces but not more than 1 pound, $5.35.
   More than 1 pound but not more than 2 pounds, $6.10.
4. $4.65 is charged for material sent in a Priority Mail flat-rate envelope provided by the USPS, regardless of weight or destination.
5. $8.80 is charged for material sent in a Priority Mail flat-rate box provided by the USPS, regardless of weight or destination.

Retail Mail

First-Class Mail
RETAIL LETTERS AND CARDS

Weight Not Over (ounces)[1]	Single-Piece
1	$0.42
2	0.62
3	0.82
3.5[2]	1.02
Card Rate[3]	$0.27

1. Nonmachinable letter-size pieces are subject to the flat-size rates.
2. For weights over 3.5 ounces, see flat-size rates.
3. The card rate applies to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail or courtesy reply mail.

First-Class Mail
RETAIL FLATS

Weight Not Over (ounces)[1]	Single-Piece
1	$0.62
2	0.82
3	1.02
4	1.22
5	1.42
6	1.62
7	1.82
8	2.02
9	2.22
10	2.42
11	2.62
12	2.82
13	3.02

1. Flat-size pieces with certain characteristics (see 101.2.0) are subject to parcel rates.

First-Class Mail
RETAIL PARCELS

Weight Not Over (ounces)[1]	Single-Piece
1	$1.00
2	1.20
3	1.40
4	1.60
5	1.80
6	2.00
7	2.20
8	2.40
9	2.60
10	2.80
11	3.00
12	3.20
13	3.40

1. For keys and ID devices, add $0.70. If more than 13 ounces, see retail Priority Mail rates.

Retail Mail: Media Mail • Library Mail

Retail Mail

Media Mail

RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece[1]	Weight Not Over (pounds)	Single-Piece[1]
1	$2.09	36	$15.39
2	2.47	37	15.77
3	2.85	38	16.15
4	3.23	39	16.53
5	3.61	40	16.91
6	3.99	41	17.29
7	4.37	42	17.67
8	4.75	43	18.05
9	5.13	44	18.43
10	5.51	45	18.81
11	5.89	46	19.19
12	6.27	47	19.57
13	6.65	48	19.95
14	7.03	49	20.33
15	7.41	50	20.71
16	7.79	51	21.09
17	8.17	52	21.47
18	8.55	53	21.85
19	8.93	54	22.23
20	9.31	55	22.61
21	9.69	56	22.99
22	10.07	57	23.37
23	10.45	58	23.75
24	10.83	59	24.13
25	11.21	60	24.51
26	11.59	61	24.89
27	11.97	62	25.27
28	12.35	63	25.65
29	12.73	64	26.03
30	13.11	65	26.41
31	13.49	66	26.79
32	13.87	67	27.17
33	14.25	68	27.55
34	14.63	69	27.93
35	15.01	70	28.31

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Library Mail

RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece[1]	Weight Not Over (pounds)	Single-Piece[1]
1	$1.99	36	$14.59
2	2.35	37	14.95
3	2.71	38	15.31
4	3.07	39	15.67
5	3.43	40	16.03
6	3.79	41	16.39
7	4.15	42	16.75
8	4.51	43	17.11
9	4.87	44	17.47
10	5.23	45	17.83
11	5.59	46	18.19
12	5.95	47	18.55
13	6.31	48	18.91
14	6.67	49	19.27
15	7.03	50	19.63
16	7.39	51	19.99
17	7.75	52	20.35
18	8.11	53	20.71
19	8.47	54	21.07
20	8.83	55	21.43
21	9.19	56	21.79
22	9.55	57	22.15
23	9.91	58	22.51
24	10.27	59	22.87
25	10.63	60	23.23
26	10.99	61	23.59
27	11.35	62	23.95
28	11.71	63	24.31
29	12.07	64	24.67
30	12.43	65	25.03
31	12.79	66	25.39
32	13.15	67	25.75
33	13.51	68	26.11
34	13.87	69	26.47
35	14.23	70	26.83

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Retail Mail

Retail Mail: Parcel Post (Local and Intra-BMC/ASF)

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
1	$3.31	$3.56	$3.59	$3.66	$3.96	$5.16	$5.41	$5.44	$5.51	$5.81
2	3.69	4.23	4.27	4.36	4.72	5.54	6.08	6.12	6.21	6.57
3	4.04	4.85	4.89	5.00	5.46	5.89	6.70	6.74	6.85	7.31
4	4.35	5.26	5.47	5.63	6.13	6.20	7.11	7.32	7.48	7.98
5	4.65	5.63	5.96	6.15	6.76	6.50	7.48	7.81	8.00	8.61
6	4.92	5.98	6.42	6.58	7.32	6.77	7.83	8.27	8.43	9.17
7	5.13	6.31	6.83	6.99	7.86	6.98	8.16	8.68	8.84	9.71
8	5.31	6.84	7.22	7.39	8.34	7.16	8.69	9.07	9.24	10.19
9	5.49	7.13	7.58	7.78	8.79	7.34	8.98	9.43	9.63	10.64
10	5.66	7.44	7.95	8.53	9.21	7.51	9.29	9.80	10.38	11.06
11	5.82	7.71	8.27	8.86	9.59	7.67	9.56	10.12	10.71	11.44
12	5.98	7.99	8.58	9.18	9.96	7.83	9.84	10.43	11.03	11.81
13	6.13	8.25	8.85	9.48	10.30	7.98	10.10	10.70	11.33	12.15
14	6.28	8.44	9.11	9.81	10.61	8.13	10.29	10.96	11.66	12.46
15	6.42	8.59	9.38	10.07	10.90	8.27	10.44	11.23	11.92	12.75
16	6.56	8.74	9.64	10.33	11.20	8.41	10.59	11.49	12.18	13.05
17	6.69	8.92	9.90	10.61	11.45	8.54	10.77	11.75	12.46	13.30
18	6.82	9.05	10.14	10.84	11.70	8.67	10.90	11.99	12.69	13.55
19	6.94	9.20	10.38	11.08	11.94	8.79	11.05	12.23	12.93	13.79
20	7.07	9.35	10.61	11.28	12.15	8.92	11.20	12.46	13.13	14.00
21	7.19	9.46	10.84	11.46	12.36	9.04	11.31	12.69	13.31	14.21
22	7.30	9.62	11.05	11.65	12.55	9.15	11.47	12.90	13.50	14.40
23	7.42	9.72	11.28	11.82	12.76	9.27	11.57	13.13	13.67	14.61
24	7.53	9.85	11.49	12.03	12.93	9.38	11.70	13.34	13.88	14.78
25	7.64	9.96	11.70	12.24	13.11	9.49	11.81	13.55	14.09	14.96
26	7.75	10.10	11.89	12.44	13.26	9.60	11.95	13.74	14.29	15.11
27	7.86	10.21	12.09	12.64	13.42	9.71	12.06	13.94	14.49	15.27
28	7.96	10.31	12.29	12.83	13.56	9.81	12.16	14.14	14.68	15.41
29	8.06	10.43	12.48	13.01	13.69	9.91	12.28	14.33	14.86	15.54
30	8.18	10.54	12.66	13.20	13.85	10.03	12.39	14.51	15.05	15.70
31	8.27	10.65	12.83	13.37	14.05	10.12	12.50	14.68	15.22	15.90
32	8.36	10.76	13.02	13.55	14.22	10.21	12.61	14.87	15.40	16.07
33	8.47	10.86	13.19	13.71	14.40	10.32	12.71	15.04	15.56	16.25
34	8.56	10.96	13.35	13.88	14.57	10.41	12.81	15.20	15.73	16.42
35	8.65	11.05	13.52	14.04	14.74	10.50	12.90	15.37	15.89	16.59

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Retail Mail: Parcel Post (Local and Intra-BMC/ASF)

Retail Mail

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
36	For parcels over 35 pounds, use nonmachinable rates.					$10.59	$12.99	$15.51	$16.04	$16.75
37	---	---	---	---	---	10.68	13.11	15.63	16.20	16.91
38	---	---	---	---	---	10.74	13.20	15.76	16.35	17.07
39	---	---	---	---	---	10.83	13.30	15.89	16.49	17.22
40	---	---	---	---	---	10.91	13.37	15.99	16.64	17.37
41	---	---	---	---	---	10.99	13.50	16.14	16.78	17.52
42	---	---	---	---	---	11.05	13.56	16.24	16.93	17.66
43	---	---	---	---	---	11.13	13.64	16.35	17.03	17.80
44	---	---	---	---	---	11.22	13.75	16.46	17.11	17.93
45	---	---	---	---	---	11.28	13.81	16.55	17.33	18.06
46	---	---	---	---	---	11.33	13.94	16.67	17.40	18.42
47	---	---	---	---	---	11.42	14.03	16.76	17.48	18.81
48	---	---	---	---	---	11.48	14.10	16.88	17.53	19.22
49	---	---	---	---	---	11.54	14.20	16.98	17.59	19.62
50	---	---	---	---	---	11.60	14.24	17.07	17.65	20.04
51	---	---	---	---	---	11.69	14.36	17.15	17.72	20.46
52	---	---	---	---	---	11.73	14.45	17.29	17.78	20.90
53	---	---	---	---	---	11.80	14.49	17.36	17.81	21.35
54	---	---	---	---	---	11.89	14.56	17.41	17.88	21.81
55	---	---	---	---	---	11.95	14.64	17.48	17.94	22.00
56	---	---	---	---	---	11.99	14.73	17.53	18.01	22.08
57	---	---	---	---	---	12.06	14.82	17.55	18.04	22.22
58	---	---	---	---	---	12.13	14.89	17.61	18.09	22.31
59	---	---	---	---	---	12.20	14.97	17.65	18.14	22.41
60	---	---	---	---	---	12.22	15.06	17.68	18.17	22.52
61	---	---	---	---	---	12.34	15.14	17.74	18.23	22.61
62	---	---	---	---	---	12.37	15.21	17.78	18.31	22.70
63	---	---	---	---	---	12.45	15.28	17.80	18.40	22.79
64	---	---	---	---	---	12.51	15.36	17.83	18.48	22.89
65	---	---	---	---	---	12.56	15.44	17.88	18.56	22.96
66	---	---	---	---	---	12.60	15.53	17.91	18.65	23.07
67	---	---	---	---	---	12.71	15.60	17.94	18.75	23.14
68	---	---	---	---	---	12.76	15.63	17.97	18.80	23.22
69	---	---	---	---	---	12.77	15.73	18.00	18.89	23.31
70	---	---	---	---	---	12.78	15.80	18.04	18.98	23.39
Oversized	---	---	---	---	---	28.82	41.78	42.17	43.01	44.28

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Retail Mail

Retail Mail: Parcel Post (Inter-BMC/ASF)

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]							Nonmachinable[1, 2, 4, 5]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$4.30	$4.46	$4.55	$4.55	$4.55	$4.55	$4.55	$7.92	$8.08	$8.17	$8.17	$8.17	$8.17	$8.17
2	4.55	4.95	5.30	5.67	5.90	6.07	6.15	8.17	8.57	8.92	9.29	9.52	9.69	9.77
3	5.05	5.80	6.45	6.90	6.97	7.26	7.87	8.67	9.42	10.07	10.52	10.59	10.88	11.49
4	5.80	6.79	7.35	7.67	7.97	8.38	9.20	9.42	10.41	10.97	11.29	11.59	12.00	12.82
5	6.45	7.46	8.12	8.49	8.91	9.45	10.47	10.07	11.08	11.74	12.11	12.53	13.07	14.09
6	7.00	8.08	8.87	9.27	9.77	10.43	11.75	10.62	11.70	12.49	12.89	13.39	14.05	15.37
7	7.55	8.61	9.58	10.01	10.59	11.40	12.87	11.17	12.23	13.20	13.63	14.21	15.02	16.49
8	8.00	8.94	10.27	10.73	11.37	12.30	14.08	11.62	12.56	13.89	14.35	14.99	15.92	17.70
9	8.37	9.27	10.92	11.41	12.11	13.13	15.22	11.99	12.89	14.54	15.03	15.73	16.75	18.84
10	8.61	10.32	11.55	12.07	12.82	13.92	16.19	12.23	13.94	15.17	15.69	16.44	17.54	19.81
11	8.79	10.69	12.16	12.71	13.50	14.68	17.11	12.41	14.31	15.78	16.33	17.12	18.30	20.73
12	8.96	10.97	12.75	13.33	14.16	15.41	18.00	12.58	14.59	16.37	16.95	17.78	19.03	21.62
13	9.14	11.22	13.31	13.93	14.79	16.12	18.85	12.76	14.84	16.93	17.55	18.41	19.74	22.47
14	9.32	11.53	13.87	14.51	15.41	16.80	19.67	12.94	15.15	17.49	18.13	19.03	20.42	23.29
15	9.48	11.79	14.40	15.08	16.00	17.46	20.47	13.10	15.41	18.02	18.70	19.62	21.08	24.09
16	9.62	12.04	14.93	15.64	16.58	18.10	21.24	13.24	15.66	18.55	19.26	20.20	21.72	24.86
17	9.80	12.25	15.43	16.18	17.14	18.72	21.98	13.42	15.87	19.05	19.80	20.76	22.34	25.60
18	9.93	12.48	15.78	16.71	17.68	19.32	22.70	13.55	16.10	19.40	20.33	21.30	22.94	26.32
19	10.10	12.71	16.13	17.23	18.22	19.91	23.41	13.72	16.33	19.75	20.85	21.84	23.53	27.03
20	10.22	12.92	16.42	17.74	18.73	20.48	24.09	13.84	16.54	20.04	21.36	22.35	24.10	27.71
21	10.37	13.14	16.72	18.23	19.24	21.04	24.75	13.99	16.76	20.34	21.85	22.86	24.66	28.37
22	10.49	13.31	17.02	18.72	19.73	21.58	25.40	14.11	16.93	20.64	22.34	23.35	25.20	29.02
23	10.63	13.55	17.33	19.20	20.21	22.11	26.03	14.25	17.17	20.95	22.82	23.83	25.73	29.65
24	10.73	13.72	17.58	19.67	20.68	22.63	26.65	14.35	17.34	21.20	23.29	24.30	26.25	30.27
25	10.87	13.90	17.85	20.13	21.14	23.13	27.25	14.49	17.52	21.47	23.75	24.76	26.75	30.87
26	10.97	14.07	18.10	20.58	21.59	23.63	27.84	14.59	17.69	21.72	24.20	25.21	27.25	31.46
27	11.12	14.25	18.33	21.03	22.04	24.12	28.42	14.74	17.87	21.95	24.65	25.66	27.74	32.04
28	11.21	14.42	18.60	21.47	22.47	24.59	28.98	14.83	18.04	22.22	25.09	26.09	28.21	32.60
29	11.34	14.60	18.84	21.90	22.90	25.06	29.53	14.96	18.22	22.46	25.52	26.52	28.68	33.15
30	11.44	14.74	19.05	22.32	23.31	25.51	30.07	15.06	18.36	22.67	25.94	26.93	29.13	33.69
31	11.57	14.89	19.27	22.74	23.72	25.96	30.61	15.19	18.51	22.89	26.36	27.34	29.58	34.23
32	11.65	15.05	19.49	23.15	24.13	26.40	31.13	15.27	18.67	23.11	26.77	27.75	30.02	34.75
33	11.75	15.21	19.71	23.56	24.52	26.83	31.64	15.37	18.83	23.33	27.18	28.14	30.45	35.26
34	11.87	15.31	19.88	23.95	24.91	27.26	32.14	15.49	18.93	23.50	27.57	28.53	30.88	35.76
35	11.97	15.48	20.09	24.35	25.29	27.68	32.63	15.59	19.10	23.71	27.97	28.91	31.30	36.25

1. For parcels that destinate to different BMC service areas.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.62 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Retail Mail: Parcel Post (Inter-BMC/ASF)

Retail Mail

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 4, 5] Zone 1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$15.68	$19.23	$23.93	$28.36	$29.29	$31.71	$36.73
37	---	---	---	---	---	---	---	15.78	19.35	24.08	28.74	29.66	32.11	37.20
38	---	---	---	---	---	---	---	15.87	19.52	24.26	29.12	30.02	32.51	37.67
39	---	---	---	---	---	---	---	15.98	19.61	24.43	29.49	30.38	32.90	38.13
40	---	---	---	---	---	---	---	16.07	19.77	24.62	29.86	30.74	33.28	38.58
41	---	---	---	---	---	---	---	16.19	19.90	24.77	30.23	31.08	33.66	39.03
42	---	---	---	---	---	---	---	16.27	20.01	24.94	30.59	31.43	34.03	39.47
43	---	---	---	---	---	---	---	16.33	20.13	25.11	30.94	31.77	34.40	39.90
44	---	---	---	---	---	---	---	16.43	20.22	25.25	31.29	32.10	34.76	40.32
45	---	---	---	---	---	---	---	16.52	20.36	25.42	31.64	32.43	35.12	40.74
46	---	---	---	---	---	---	---	16.61	20.47	25.58	31.86	32.75	35.48	41.15
47	---	---	---	---	---	---	---	16.72	20.60	25.71	32.04	33.07	35.82	41.56
48	---	---	---	---	---	---	---	16.79	20.70	25.88	32.21	33.39	36.17	41.96
49	---	---	---	---	---	---	---	16.85	20.82	26.01	32.38	33.70	36.50	42.35
50	---	---	---	---	---	---	---	16.93	20.90	26.12	32.55	34.01	36.84	42.74
51	---	---	---	---	---	---	---	17.04	21.03	26.28	32.71	34.32	37.17	43.13
52	---	---	---	---	---	---	---	17.10	21.13	26.41	32.86	34.62	37.49	43.51
53	---	---	---	---	---	---	---	17.21	21.21	26.50	33.01	34.91	37.82	43.88
54	---	---	---	---	---	---	---	17.27	21.35	26.66	33.16	35.21	38.13	44.25
55	---	---	---	---	---	---	---	17.34	21.39	26.79	33.31	35.50	38.45	44.62
56	---	---	---	---	---	---	---	17.44	21.55	26.90	33.46	35.78	38.76	44.98
57	---	---	---	---	---	---	---	17.52	21.63	27.03	33.59	36.07	39.06	45.33
58	---	---	---	---	---	---	---	17.58	21.72	27.14	33.73	36.35	39.37	45.68
59	---	---	---	---	---	---	---	17.67	21.81	27.27	33.86	36.63	39.67	46.03
60	---	---	---	---	---	---	---	17.75	21.90	27.40	33.99	36.90	39.96	46.38
61	---	---	---	---	---	---	---	17.86	22.03	27.49	34.11	37.17	40.25	46.72
62	---	---	---	---	---	---	---	17.92	22.09	27.61	34.24	37.44	40.54	47.05
63	---	---	---	---	---	---	---	17.97	22.20	27.72	34.35	37.71	40.83	47.38
64	---	---	---	---	---	---	---	18.04	22.26	27.81	34.47	37.97	41.11	47.71
65	---	---	---	---	---	---	---	18.12	22.37	27.93	34.59	38.23	41.39	48.03
66	---	---	---	---	---	---	---	18.22	22.46	28.02	34.69	38.49	41.67	48.36
67	---	---	---	---	---	---	---	18.30	22.55	28.14	34.81	38.74	41.95	48.67
68	---	---	---	---	---	---	---	18.35	22.63	28.26	34.91	38.99	42.22	48.99
69	---	---	---	---	---	---	---	18.41	22.69	28.35	35.02	39.24	42.49	49.30
70	---	---	---	---	---	---	---	18.51	22.81	28.45	35.11	39.49	42.75	49.61
Oversized	---	---	---	---	---	---	---	50.54	54.00	57.16	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.62 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Letters

Discount Letters: First-Class Mail

First-Class Mail

DISCOUNT LETTERS & CARDS

Weight Not Over (ounces)	Automation				Machinable
	5-Digit	3-Digit	AADC	Mixed AADC	Presorted[1]
1	$0.312	$0.331	$0.335	$0.346	$0.400
2	0.467	0.486	0.490	0.501	0.600
3	0.622	0.641	0.645	0.656	0.800
3.5	0.777	0.796	0.800	0.811	1.000
Card Rate[2]	$0.204	$0.211	$0.215	$0.222	$0.241

1. For nonmachinable letters, see First-Class Mail Presorted flat-size rates.
2. The card rate applies to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail or courtesy reply mail.

Discount Letters: Standard Mail Regular

Discount Letters

Standard Mail Regular

DISCOUNT LETTERS—ENHANCED CARRIER ROUTE & AUTOMATION

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation			
		Saturation	High Density	Basic	5-Digit	3-Digit	AADC	Mixed AADC
Letters weighing 3.3 oz. or less per piece rate	None	$0.172	$0.190	$0.233	$0.219	$0.235	$0.242	$0.252
	DBMC	0.144	0.162	0.205	0.191	0.207	0.214	0.224
	DSCF	0.138	0.156	0.199	0.185	0.201	0.208	---
	DDU	---	---	---	---	---	---	---
more than 3.3 oz.[2] per pound rate	None	0.641	0.641	0.641	0.739	0.739	0.739	0.739
	DBMC	0.505	0.505	0.505	0.603	0.603	0.603	0.603
	DSCF	0.473	0.473	0.473	0.571	0.571	0.571	---
	DDU	---	---	---	---	---	---	---
+ per piece rate		+ 0.040[3]	+ 0.058[3]	+ 0.101[3]	+ 0.067[3]	+ 0.083[3]	+ 0.090[3]	+ 0.100[3]

1. ECR Saturation or ECR High Density letters that are not automation-compatible (201.3.0) are mailable at the flat-size rates (243.6.4 or 243.6.5).
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
3. Per piece rate for ECR letters and automation letters that weigh more than 3.3 ounces but less than (or equal to) 3.5 ounces includes a discount that equals the applicable flat-size rate (3.3 ounces or less) minus the applicable letter piece rate (3.3 ounces or less).

Standard Mail Regular

DISCOUNT LETTERS—NONAUTOMATION

	Entry Discount	Machinable		Nonmachinable[1]			
		AADC	Mixed AADC	5-Digit	3-Digit	ADC	Mixed ADC
Letters weighing 3.3 oz. or less per piece rate	None	$0.287	$0.292	$0.360	$0.395	$0.403	$0.448
	DBMC	0.259	0.264	0.332	0.367	0.375	0.420
	DSCF	0.253	---	0.326	0.361	0.369	---
	DDU	---	---	---	---	---	---

1. For pieces over 3.3 ounces, see Standard Mail Not Flat-Machinable rates.

Standard Mail Nonprofit

DISCOUNT LETTERS—ENHANCED CARRIER ROUTE & AUTOMATION

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation			
		Saturation	High Density	Basic	5-Digit	3-Digit	AADC	Mixed AADC
Letters weighing 3.3 oz. or less	None	$0.114	$0.122	$0.156	$0.129	$0.145	$0.152	$0.162
	DBMC	0.086	0.094	0.128	0.101	0.117	0.124	0.134
per piece rate	DSCF	0.080	0.088	0.122	0.095	0.111	0.118	---
	DDU	---	---	---	---	---	---	---
more than 3.3 oz.[2]	None	0.452	0.452	0.452	0.622	0.622	0.622	0.622
	DBMC	0.316	0.316	0.316	0.486	0.486	0.486	0.486
per pound rate	DSCF	0.284	0.284	0.284	0.454	0.454	0.454	---
	DDU	---	---	---	---	---	---	---
+		+	+	+	+	+	+	+
per piece rate		0.032[3]	0.038[3]	0.063[3]	0.001[3]	0.017[3]	0.024[3]	0.034[3]

1. ECR Saturation or ECR High Density letters that are not automation-compatible (201.3.0) are mailable at the flat-size rates (243.6.4 or 243.6.5).
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
3. Per piece rate for ECR letters and automation letters that weigh more than 3.3 ounces but less than (or equal to) 3.5 ounces includes a discount that equals the applicable flat-size rate (3.3 ounces or less) minus the applicable letter piece rate (3.3 ounces or less).

Standard Mail Nonprofit

DISCOUNT LETTERS—NONAUTOMATION

	Entry Discount	Machinable		Nonmachinable[1]			
		AADC	Mixed AADC	5-Digit	3-Digit	ADC	Mixed ADC
Letters weighing 3.3 oz. or less	None	$0.173	$0.178	$0.205	$0.210	$0.230	$0.263
	DBMC	0.145	0.150	0.177	0.182	0.202	0.235
per piece rate	DSCF	0.139	---	0.171	0.176	0.196	---
	DDU	---	---	---	---	---	---

1. For pieces over 3.3 ounces, see Standard Mail Not Flat-Machinable rates.

Discount Flats: First-Class Mail • Media Mail • Library Mail

Discount Flats

First-Class Mail

DISCOUNT FLATS

Weight Not Over (ounces)[1]	Automation				Nonautomation
	5-Digit	3-Digit	ADC	Mixed ADC	Presorted
1	$0.398	$0.423	$0.433	$0.465	$0.519
2	0.598	0.623	0.633	0.665	0.719
3	0.798	0.823	0.833	0.865	0.919
4	0.998	1.023	1.033	1.065	1.119
5	1.198	1.223	1.233	1.265	1.319
6	1.398	1.423	1.433	1.465	1.519
7	1.598	1.623	1.633	1.665	1.719
8	1.798	1.823	1.833	1.865	1.919
9	1.998	2.023	2.033	2.065	2.119
10	2.198	2.223	2.233	2.265	2.319
11	2.398	2.423	2.433	2.465	2.519
12	2.598	2.623	2.633	2.665	2.719
13	2.798	2.823	2.833	2.865	2.919

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to parcel rates.

Media Mail

DISCOUNT FLATS

Weight Not Over (pounds)	5-Digit	Basic
1	$1.30	$1.69
2	1.68	2.07
3	2.06	2.45
4	2.44	2.83
5	2.82	3.21

Library Mail

DISCOUNT FLATS

Weight Not Over (pounds)	5-Digit	Basic
1	$1.24	$1.61
2	1.60	1.97
3	1.96	2.33
4	2.32	2.69
5	2.68	3.05

Discount Flats

Standard Mail Regular

DISCOUNT FLATS

		Enhanced Carrier Route (ECR)[1]			Automation[1]				Nonautomation [1, 2]			
	Entry Discount	Saturation[2]	High Density	Basic	5-Digit	3-Digit	ADC	Mixed ADC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.182	$0.204	$0.233	$0.300	$0.328	$0.354	$0.391	$0.343	$0.378	$0.401	$0.431
	DBMC	0.154	0.176	0.205	0.272	0.300	0.326	0.363	0.315	0.350	0.373	0.403
	DSCF	0.148	0.170	0.199	0.266	0.294	0.320	---	0.309	0.344	0.367	---
	DDU	0.140	0.162	0.191	---	---	---	---	---	---	---	---
more than 3.3 oz.[3] per pound rate	None	0.641	0.641	0.641	0.739	0.739	0.739	0.739	0.739	0.739	0.739	0.739
	DBMC	0.505	0.505	0.505	0.603	0.603	0.603	0.603	0.603	0.603	0.603	0.603
	DSCF	0.473	0.473	0.473	0.571	0.571	0.571	0.571	0.571	0.571	0.571	---
	DDU	0.436	0.436	0.436	---	---	---	---	---	---	---	---
+ per piece rate		+ 0.050	+ 0.072	+ 0.101	+ 0.148	+ 0.176	+ 0.202	+ 0.239	+ 0.191	+ 0.226	+ 0.249	+ 0.279

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to parcel rates.
2. For ECR saturation pieces with a detached address label, add $0.015.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

DISCOUNT FLATS

		Enhanced Carrier Route (ECR)[1]			Automation[1]				Nonautomation [1, 2]			
	Entry Discount	Saturation[2]	High Density	Basic	5-Digit	3-Digit	ADC	Mixed ADC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.125	$0.131	$0.156	$0.191	$0.200	$0.232	$0.245	$0.221	$0.232	$0.279	$0.285
	DBMC	0.097	0.103	0.128	0.163	0.172	0.204	0.217	0.193	0.204	0.251	0.257
	DSCF	0.091	0.097	0.122	0.157	0.166	0.198	---	0.187	0.198	0.245	---
	DDU	0.083	0.089	0.114	---	---	---	---	---	---	---	---
more than 3.3 oz.[3] per pound rate	None	0.452	0.452	0.452	0.622	0.622	0.622	0.622	0.622	0.622	0.622	0.622
	DBMC	0.316	0.316	0.316	0.486	0.486	0.486	0.486	0.486	0.486	0.486	0.486
	DSCF	0.284	0.284	0.284	0.454	0.454	0.454	0.454	0.454	0.454	0.454	---
	DDU	0.247	0.247	0.247	---	---	---	---	---	---	---	---
+ per piece rate		+ 0.032	+ 0.038	+ 0.063	+ 0.063	+ 0.072	+ 0.104	+ 0.117	+ 0.093	+ 0.104	+ 0.151	+ 0.157

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to parcel rates.
2. For ECR saturation pieces with a detached address label, add $0.015.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Discount Flats: Bound Printed Matter

Discount Flats

Bound Printed Matter

DISCOUNT CARRIER ROUTE & PRESORTED FLATS

Each piece is subject to both a piece rate and a pound rate[1]		Carrier Route			Presorted[2]		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1 & 2	$1.149	+	$0.130	$1.245	+	$0.130
	3	1.149	+	0.156	1.245	+	0.156
	4	1.149	+	0.204	1.245	+	0.204
	5	1.149	+	0.259	1.245	+	0.259
	6	1.149	+	0.322	1.245	+	0.322
	7	1.149	+	0.371	1.245	+	0.371
	8	1.149	+	0.492	1.245	+	0.492
Destination Entry							
DBMC	1 & 2	0.884	+	0.090	0.940	+	0.090
	3	0.884	+	0.130	0.940	+	0.130
	4	0.884	+	0.172	0.940	+	0.172
	5	0.884	+	0.229	0.940	+	0.229
DSCF		0.503	+	0.086	0.599	+	0.086
DDU		0.432	+	0.042	0.528[3]	+	0.042

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. For barcode discount, deduct $0.03 per piece (automation-compatible flats only). Barcode discount not available for pieces mailed at presorted DDU rates.
3. Each flat must weigh more than 1 pound to be eligible for presorted DDU rate.

Bound Printed Matter

NONPRESORTED FLATS

Weight Not Over (pounds)[1]	Zone						
	1 & 2	3	4	5	6	7	8
1.0	$1.96	$2.00	$2.06	$2.14	$2.21	$2.29	$2.45
1.5	1.96	2.00	2.06	2.14	2.21	2.29	2.45
2.0	2.05	2.11	2.19	2.29	2.39	2.49	2.71
2.5	2.15	2.22	2.32	2.45	2.57	2.70	2.97
3.0	2.24	2.33	2.45	2.60	2.75	2.90	3.23
3.5	2.34	2.44	2.58	2.76	2.93	3.11	3.49
4.0	2.43	2.55	2.71	2.91	3.11	3.31	3.75
4.5	2.53	2.66	2.84	3.07	3.29	3.52	4.01
5.0	2.62	2.77	2.97	3.22	3.47	3.72	4.27
6.0	2.81	2.99	3.23	3.53	3.83	4.13	4.79
7.0	3.00	3.21	3.49	3.84	4.19	4.54	5.31
8.0	3.19	3.43	3.75	4.15	4.55	4.95	5.83
9.0	3.38	3.65	4.01	4.46	4.91	5.36	6.35
10.0	3.57	3.87	4.27	4.77	5.27	5.77	6.87
11.0	3.76	4.09	4.53	5.08	5.63	6.18	7.39
12.0	3.95	4.31	4.79	5.39	5.99	6.59	7.91
13.0	4.14	4.53	5.05	5.70	6.35	7.00	8.43
14.0	4.33	4.75	5.31	6.01	6.71	7.41	8.95
15.0	4.52	4.97	5.57	6.32	7.07	7.82	9.47

1. For barcode discount, deduct $0.03 per piece (automation-compatible flats only, 50-piece minimum).

Discount Parcels

Discount Parcels: First-Class Mail

First-Class Mail

DISCOUNT PARCELS

Weight Not Over (ounces)[1]	5-Digit	3-Digit	ADC	Single-Piece[2]
1	$0.643	$0.717	$0.727	$1.00
2	0.843	0.917	0.927	1.20
3	1.043	1.117	1.127	1.40
4	1.243	1.317	1.327	1.60
5	1.443	1.517	1.527	1.80
6	1.643	1.717	1.727	2.00
7	1.843	1.917	1.927	2.20
8	2.043	2.117	2.127	2.40
9	2.243	2.317	2.327	2.60
10	2.443	2.517	2.527	2.80
11	2.643	2.717	2.727	3.00
12	2.843	2.917	2.927	3.20
13	3.043	3.117	3.127	3.40

1. A $0.05 surcharge applies to pieces in 3-digit and ADC sacks that:
   - Do not bear a correct 5-digit POSTNET or UCC/EAN 128 barcode (708.5).
   - Weigh less than 2 ounces.
   - Are irregularly shaped, such as tubes, rolls, and triangles.
2. Use single-piece rate for mixed ADC sortation.

Discount Parcels: Standard Mail

Discount Parcels

Standard Mail Regular

DISCOUNT PARCELS

	Entry Discount	Enhanced Carrier Route (ECR)			Machinable[1]			Nonmachinable [1,2]			
		Saturation[3]	High Density	Basic	5-Digit	BMC	Mixed BMC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.382	$0.404	$0.433	---	---	---	$0.672	$0.804	$0.955	$1.106
	DBMC	0.354	0.376	0.405	---	---	---	0.639	0.771	0.922	1.073
	DSCF	0.348	0.370	0.399	---	---	---	0.596	0.728	0.879	---
	DDU	0.340	0.362	0.391	---	---	---	0.558	---	---	---
more than 3.3 oz.[4] per pound rate	None	0.641	0.641	0.641	1.001	1.001	1.001	1.001	1.001	1.001	1.001
	DBMC	0.505	0.505	0.505	0.838	0.838	0.838	0.838	0.838	0.838	0.838
	DSCF	0.473	0.473	0.473	0.631	0.631	0.631	0.631	0.631	0.631	---
	DDU	0.436	0.436	0.436	0.447	0.447	0.447	0.447	---	---	---
+ per piece rate		+ 0.250	+ 0.272	+ 0.301	+ 0.466	+ 0.682	+ 0.800	+ 0.466	+ 0.598	+ 0.749	+ 0.900

1. For nonbarcoded parcels, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. Customized MarketMail pieces pay $0.489 per piece.
3. For ECR saturation pieces with a detached address label, add $0.015.
4. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

DISCOUNT PARCELS

	Entry Discount	Enhanced Carrier Route (ECR)			Machinable[1]			Nonmachinable[1,2]			
		Saturation[3]	High Density	Basic	5-Digit	BMC	Mixed BMC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.325	$0.351	$0.356	---	---	---	$0.572	$0.714	$0.845	$0.986
	DBMC	0.297	0.323	0.328	---	---	---	0.539	0.681	0.812	0.953
	DSCF	0.291	0.317	0.322	---	---	---	0.496	0.638	0.769	---
	DDU	0.283	0.309	0.314	---	---	---	0.458	---	---	---
more than 3.3 oz.[4] per pound rate	None	0.452	0.452	0.452	0.903	0.903	0.903	0.903	0.903	0.903	0.903
	DBMC	0.316	0.316	0.316	0.740	0.740	0.740	0.740	0.740	0.740	0.740
	DSCF	0.284	0.284	0.284	0.533	0.533	0.533	0.533	0.533	0.533	---
	DDU	0.247	0.247	0.247	0.349	0.349	0.349	0.349	---	---	---
+ per piece rate		+ 0.232	+ 0.238	+ 0.263	+ 0.386	+ 0.592	+ 0.700	+ 0.386	+ 0.528	+ 0.659	+ 0.800

1. For nonbarcoded parcels, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. Customized MarketMail pieces pay $0.340 per piece.
3. For ECR saturation pieces with a detached address label, add $0.015.
4. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Discount Parcels

Discount Parcels: Standard Mail

Standard Mail Regular

NOT FLAT-MACHINABLE

	Entry Discount	Not Flat-Machinable[1]			
		5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.489	$0.620	$0.788	$0.956
	DBMC	0.461	0.592	0.760	0.928
	DSCF	0.455	0.586	0.754	---
	DDU	0.447	---	---	---
more than 3.3 oz.[2] per pound rate	None	1.001	1.001	1.001	1.001
	DBMC	0.865	0.865	0.865	0.865
	DSCF	0.833	0.833	0.833	---
	DDU	0.796	---	---	---
+ per piece rate		+ 0.283	+ 0.414	+ 0.582	+ 0.750

1. For nonbarcoded pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

NOT FLAT-MACHINABLE

	Entry Discount	Not Flat-Machinable[1]			
		5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less per piece rate	None	$0.340	$0.471	$0.539	$0.632
	DBMC	0.312	0.443	0.511	0.604
	DSCF	0.306	0.437	0.505	---
	DDU	0.298	---	---	---
more than 3.3 oz.[2] per pound rate	None	0.641	0.641	0.641	0.641
	DBMC	0.505	0.505	0.505	0.505
	DSCF	0.473	0.473	0.473	---
	DDU	0.436	---	---	---
+ per piece rate		+ 0.208	+ 0.339	+ 0.407	+ 0.500

1. For nonbarcoded pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Discount Parcels: Bound Printed Matter

Discount Parcels

Bound Printed Matter
DISCOUNT PARCELS

Each piece is subject to both a piece rate and a pound rate[1]		Carrier Route			Presorted[2]		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1&2	$1.305	+	$0.130	$1.401	+	$0.130
	3	1.305	+	0.156	1.401	+	0.156
	4	1.305	+	0.204	1.401	+	0.204
	5	1.305	+	0.259	1.401	+	0.259
	6	1.305	+	0.322	1.401	+	0.322
	7	1.305	+	0.371	1.401	+	0.371
	8	1.305	+	0.492	1.401	+	0.492
Destination Entry							
DBMC	1&2	1.000	+	0.090	1.096	+	0.090
	3	1.000	+	0.130	1.096	+	0.130
	4	1.000	+	0.172	1.096	+	0.172
	5	1.000	+	0.229	1.096	+	0.229
DSCF		0.659	+	0.086	0.755	+	0.086
DDU		0.588	+	0.042	0.684	+	0.042

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. Machinable presorted parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum), except for parcels mailed at presorted DDU or DSCF rates.

Bound Printed Matter
NONPRESORTED PARCELS

Weight Not Over (pounds)[1]	Zone						
	1 & 2	3	4	5	6	7	8
1.0	$2.12	$2.16	$2.22	$2.30	$2.37	$2.45	$2.61
1.5	2.12	2.16	2.22	2.30	2.37	2.45	2.61
2.0	2.21	2.27	2.35	2.45	2.55	2.65	2.87
2.5	2.31	2.38	2.48	2.61	2.73	2.86	3.13
3.0	2.40	2.49	2.61	2.76	2.91	3.06	3.39
3.5	2.50	2.60	2.74	2.92	3.09	3.27	3.65
4.0	2.59	2.71	2.87	3.07	3.27	3.47	3.91
4.5	2.69	2.82	3.00	3.23	3.45	3.68	4.17
5.0	2.78	2.93	3.13	3.38	3.63	3.88	4.43
6.0	2.97	3.15	3.39	3.69	3.99	4.29	4.95
7.0	3.16	3.37	3.65	4.00	4.35	4.70	5.47
8.0	3.35	3.59	3.91	4.31	4.71	5.11	5.99
9.0	3.54	3.81	4.17	4.62	5.07	5.52	6.51
10.0	3.73	4.03	4.43	4.93	5.43	5.93	7.03
11.0	3.92	4.25	4.69	5.24	5.79	6.34	7.55
12.0	4.11	4.47	4.95	5.55	6.15	6.75	8.07
13.0	4.30	4.69	5.21	5.86	6.51	7.16	8.59
14.0	4.49	4.91	5.47	6.17	6.87	7.57	9.11
15.0	4.68	5.13	5.73	6.48	7.23	7.98	9.63

1. For barcode discount, deduct $0.03 per piece (machinable parcels only, 50-piece minimum).

Discount Parcels

Discount Parcels: Parcel Post

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
1	$3.31	$3.56	$3.59	$3.66	$3.96	$5.16	$5.41	$5.44	$5.51	$5.81
2	3.69	4.23	4.27	4.36	4.72	5.54	6.08	6.12	6.21	6.57
3	4.04	4.85	4.89	5.00	5.46	5.89	6.70	6.74	6.85	7.31
4	4.35	5.26	5.47	5.63	6.13	6.20	7.11	7.32	7.48	7.98
5	4.65	5.63	5.96	6.15	6.76	6.50	7.48	7.81	8.00	8.61
6	4.92	5.98	6.42	6.58	7.32	6.77	7.83	8.27	8.43	9.17
7	5.13	6.31	6.83	6.99	7.86	6.98	8.16	8.68	8.84	9.71
8	5.31	6.84	7.22	7.39	8.34	7.16	8.69	9.07	9.24	10.19
9	5.49	7.13	7.58	7.78	8.79	7.34	8.98	9.43	9.63	10.64
10	5.66	7.44	7.95	8.53	9.21	7.51	9.29	9.80	10.38	11.06
11	5.82	7.71	8.27	8.86	9.59	7.67	9.56	10.12	10.71	11.44
12	5.98	7.99	8.58	9.18	9.96	7.83	9.84	10.43	11.03	11.81
13	6.13	8.25	8.85	9.48	10.30	7.98	10.10	10.70	11.33	12.15
14	6.28	8.44	9.11	9.81	10.61	8.13	10.29	10.96	11.66	12.46
15	6.42	8.59	9.38	10.07	10.90	8.27	10.44	11.23	11.92	12.75
16	6.56	8.74	9.64	10.33	11.20	8.41	10.59	11.49	12.18	13.05
17	6.69	8.92	9.90	10.61	11.45	8.54	10.77	11.75	12.46	13.30
18	6.82	9.05	10.14	10.84	11.70	8.67	10.90	11.99	12.69	13.55
19	6.94	9.20	10.38	11.08	11.94	8.79	11.05	12.23	12.93	13.79
20	7.07	9.35	10.61	11.28	12.15	8.92	11.20	12.46	13.13	14.00
21	7.19	9.46	10.84	11.46	12.36	9.04	11.31	12.69	13.31	14.21
22	7.30	9.62	11.05	11.65	12.55	9.15	11.47	12.90	13.50	14.40
23	7.42	9.72	11.28	11.82	12.76	9.27	11.57	13.13	13.67	14.61
24	7.53	9.85	11.49	12.03	12.93	9.38	11.70	13.34	13.88	14.78
25	7.64	9.96	11.70	12.24	13.11	9.49	11.81	13.55	14.09	14.96
26	7.75	10.10	11.89	12.44	13.26	9.60	11.95	13.74	14.29	15.11
27	7.86	10.21	12.09	12.64	13.42	9.71	12.06	13.94	14.49	15.27
28	7.96	10.31	12.29	12.83	13.56	9.81	12.16	14.14	14.68	15.41
29	8.06	10.43	12.48	13.01	13.69	9.91	12.28	14.33	14.86	15.54
30	8.18	10.54	12.66	13.20	13.85	10.03	12.39	14.51	15.05	15.70
31	8.27	10.65	12.83	13.37	14.05	10.12	12.50	14.68	15.22	15.90
32	8.36	10.76	13.02	13.55	14.22	10.21	12.61	14.87	15.40	16.07
33	8.47	10.86	13.19	13.71	14.40	10.32	12.71	15.04	15.56	16.25
34	8.56	10.96	13.35	13.88	14.57	10.41	12.81	15.20	15.73	16.42
35	8.65	11.05	13.52	14.04	14.74	10.50	12.90	15.37	15.89	16.59

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
36	---	---	---	---	---	$10.59	$12.99	$15.51	$16.04	$16.75
37	---	---	---	---	---	10.68	13.11	15.63	16.20	16.91
38	---	---	---	---	---	10.74	13.20	15.76	16.35	17.07
39	---	---	---	---	---	10.83	13.30	15.89	16.49	17.22
40	---	---	---	---	---	10.91	13.37	15.99	16.64	17.37
41	---	---	---	---	---	10.99	13.50	16.14	16.78	17.52
42	---	---	---	---	---	11.05	13.56	16.24	16.93	17.66
43	---	---	---	---	---	11.13	13.64	16.35	17.03	17.80
44	---	---	---	---	---	11.22	13.75	16.46	17.11	17.93
45	---	---	---	---	---	11.28	13.81	16.55	17.33	18.06
46	---	---	---	---	---	11.33	13.94	16.67	17.40	18.42
47	---	---	---	---	---	11.42	14.03	16.76	17.48	18.81
48	---	---	---	---	---	11.48	14.10	16.88	17.53	19.22
49	---	---	---	---	---	11.54	14.20	16.98	17.59	19.62
50	---	---	---	---	---	11.60	14.24	17.07	17.65	20.04
51	---	---	---	---	---	11.69	14.36	17.15	17.72	20.46
52	---	---	---	---	---	11.73	14.45	17.29	17.78	20.90
53	---	---	---	---	---	11.80	14.49	17.36	17.81	21.35
54	---	---	---	---	---	11.89	14.56	17.41	17.88	21.81
55	---	---	---	---	---	11.95	14.64	17.48	17.94	22.00
56	---	---	---	---	---	11.99	14.73	17.53	18.01	22.08
57	---	---	---	---	---	12.06	14.82	17.55	18.04	22.22
58	---	---	---	---	---	12.13	14.89	17.61	18.09	22.31
59	---	---	---	---	---	12.20	14.97	17.65	18.14	22.41
60	---	---	---	---	---	12.22	15.06	17.68	18.17	22.52
61	---	---	---	---	---	12.34	15.14	17.74	18.23	22.61
62	---	---	---	---	---	12.37	15.21	17.78	18.31	22.70
63	---	---	---	---	---	12.45	15.28	17.80	18.40	22.79
64	---	---	---	---	---	12.51	15.36	17.83	18.48	22.89
65	---	---	---	---	---	12.56	15.44	17.88	18.56	22.96
66	---	---	---	---	---	12.60	15.53	17.91	18.65	23.07
67	---	---	---	---	---	12.71	15.60	17.94	18.75	23.14
68	---	---	---	---	---	12.76	15.63	17.97	18.80	23.22
69	---	---	---	---	---	12.77	15.73	18.00	18.89	23.31
70	---	---	---	---	---	12.78	15.80	18.04	18.98	23.39
Oversized	---	---	---	---	---	28.82	41.78	42.17	43.01	44.28

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7]							Nonmachinable[1, 2, 4, 5, 6, 7]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$4.30	$4.46	$4.55	$4.55	$4.55	$4.55	$4.55	$7.92	$8.08	$8.17	$8.17	$8.17	$8.17	$8.17
2	4.55	4.95	5.30	5.67	5.90	6.07	6.15	8.17	8.57	8.92	9.29	9.52	9.69	9.77
3	5.05	5.80	6.45	6.90	6.97	7.26	7.87	8.67	9.42	10.07	10.52	10.59	10.88	11.49
4	5.80	6.79	7.35	7.67	7.97	8.38	9.20	9.42	10.41	10.97	11.29	11.59	12.00	12.82
5	6.45	7.46	8.12	8.49	8.91	9.45	10.47	10.07	11.08	11.74	12.11	12.53	13.07	14.09
6	7.00	8.08	8.87	9.27	9.77	10.43	11.75	10.62	11.70	12.49	12.89	13.39	14.05	15.37
7	7.55	8.61	9.58	10.01	10.59	11.40	12.87	11.17	12.23	13.20	13.63	14.21	15.02	16.49
8	8.00	8.94	10.27	10.73	11.37	12.30	14.08	11.62	12.56	13.89	14.35	14.99	15.92	17.70
9	8.37	9.27	10.92	11.41	12.11	13.13	15.22	11.99	12.89	14.54	15.03	15.73	16.75	18.84
10	8.61	10.32	11.55	12.07	12.82	13.92	16.19	12.23	13.94	15.17	15.69	16.44	17.54	19.81
11	8.79	10.69	12.16	12.71	13.50	14.68	17.11	12.41	14.31	15.78	16.33	17.12	18.30	20.73
12	8.96	10.97	12.75	13.33	14.16	15.41	18.00	12.58	14.59	16.37	16.95	17.78	19.03	21.62
13	9.14	11.22	13.31	13.93	14.79	16.12	18.85	12.76	14.84	16.93	17.55	18.41	19.74	22.47
14	9.32	11.53	13.87	14.51	15.41	16.80	19.67	12.94	15.15	17.49	18.13	19.03	20.42	23.29
15	9.48	11.79	14.40	15.08	16.00	17.46	20.47	13.10	15.41	18.02	18.70	19.62	21.08	24.09
16	9.62	12.04	14.93	15.64	16.58	18.10	21.24	13.24	15.66	18.55	19.26	20.20	21.72	24.86
17	9.80	12.25	15.43	16.18	17.14	18.72	21.98	13.42	15.87	19.05	19.80	20.76	22.34	25.60
18	9.93	12.48	15.78	16.71	17.68	19.32	22.70	13.55	16.10	19.40	20.33	21.30	22.94	26.32
19	10.10	12.71	16.13	17.23	18.22	19.91	23.41	13.72	16.33	19.75	20.85	21.84	23.53	27.03
20	10.22	12.92	16.42	17.74	18.73	20.48	24.09	13.84	16.54	20.04	21.36	22.35	24.10	27.71
21	10.37	13.14	16.72	18.23	19.24	21.04	24.75	13.99	16.76	20.34	21.85	22.86	24.66	28.37
22	10.49	13.31	17.02	18.72	19.73	21.58	25.40	14.11	16.93	20.64	22.34	23.35	25.20	29.02
23	10.63	13.55	17.33	19.20	20.21	22.11	26.03	14.25	17.17	20.95	22.82	23.83	25.73	29.65
24	10.73	13.72	17.58	19.67	20.68	22.63	26.65	14.35	17.34	21.20	23.29	24.30	26.25	30.27
25	10.87	13.90	17.85	20.13	21.14	23.13	27.25	14.49	17.52	21.47	23.75	24.76	26.75	30.87
26	10.97	14.07	18.10	20.58	21.59	23.63	27.84	14.59	17.69	21.72	24.20	25.21	27.25	31.46
27	11.12	14.25	18.33	21.03	22.04	24.12	28.42	14.74	17.87	21.95	24.65	25.66	27.74	32.04
28	11.21	14.42	18.60	21.47	22.47	24.59	28.98	14.83	18.04	22.22	25.09	26.09	28.21	32.60
29	11.34	14.60	18.84	21.90	22.90	25.06	29.53	14.96	18.22	22.46	25.52	26.52	28.68	33.15
30	11.44	14.74	19.05	22.32	23.31	25.51	30.07	15.06	18.36	22.67	25.94	26.93	29.13	33.69
31	11.57	14.89	19.27	22.74	23.72	25.96	30.61	15.19	18.51	22.89	26.36	27.34	29.58	34.23
32	11.65	15.05	19.49	23.15	24.13	26.40	31.13	15.27	18.67	23.11	26.77	27.75	30.02	34.75
33	11.75	15.21	19.71	23.56	24.52	26.83	31.64	15.37	18.83	23.33	27.18	28.14	30.45	35.26
34	11.87	15.31	19.88	23.95	24.91	27.26	32.14	15.49	18.93	23.50	27.57	28.53	30.88	35.76
35	11.97	15.48	20.09	24.35	25.29	27.68	32.63	15.59	19.10	23.71	27.97	28.91	31.30	36.25

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.62 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC presort discount, deduct $1.30 per piece.
7. For BMC presort discount, deduct $0.32 per piece.

Parcel Post (Inter-BMC/ASF—Single-Piece

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7]							Nonmachinable[1, 2, 4, 5, 6, 7]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
36	---	---	---	---	---	---	---	$15.68	$19.23	$23.93	$28.36	$29.29	$31.71	$36.73
37	---	---	---	---	---	---	---	15.78	19.35	24.08	28.74	29.66	32.11	37.20
38	---	---	---	---	---	---	---	15.87	19.52	24.26	29.12	30.02	32.51	37.67
39	---	---	---	---	---	---	---	15.98	19.61	24.43	29.49	30.38	32.90	38.13
40	---	---	---	---	---	---	---	16.07	19.77	24.62	29.86	30.74	33.28	38.58
41	---	---	---	---	---	---	---	16.19	19.90	24.77	30.23	31.08	33.66	39.03
42	---	---	---	---	---	---	---	16.27	20.01	24.94	30.59	31.43	34.03	39.47
43	---	---	---	---	---	---	---	16.33	20.13	25.11	30.94	31.77	34.40	39.90
44	---	---	---	---	---	---	---	16.43	20.22	25.25	31.29	32.10	34.76	40.32
45	---	---	---	---	---	---	---	16.52	20.36	25.42	31.64	32.43	35.12	40.74
46	---	---	---	---	---	---	---	16.61	20.47	25.58	31.86	32.75	35.48	41.15
47	---	---	---	---	---	---	---	16.72	20.60	25.71	32.04	33.07	35.82	41.56
48	---	---	---	---	---	---	---	16.79	20.70	25.88	32.21	33.39	36.17	41.96
49	---	---	---	---	---	---	---	16.85	20.82	26.01	32.38	33.70	36.50	42.35
50	---	---	---	---	---	---	---	16.93	20.90	26.12	32.55	34.01	36.84	42.74
51	---	---	---	---	---	---	---	17.04	21.03	26.28	32.71	34.32	37.17	43.13
52	---	---	---	---	---	---	---	17.10	21.13	26.41	32.86	34.62	37.49	43.51
53	---	---	---	---	---	---	---	17.21	21.21	26.50	33.01	34.91	37.82	43.88
54	---	---	---	---	---	---	---	17.27	21.35	26.66	33.16	35.21	38.13	44.25
55	---	---	---	---	---	---	---	17.34	21.39	26.79	33.31	35.50	38.45	44.62
56	---	---	---	---	---	---	---	17.44	21.55	26.90	33.46	35.78	38.76	44.98
57	---	---	---	---	---	---	---	17.52	21.63	27.03	33.59	36.07	39.06	45.33
58	---	---	---	---	---	---	---	17.58	21.72	27.14	33.73	36.35	39.37	45.68
59	---	---	---	---	---	---	---	17.67	21.81	27.27	33.86	36.63	39.67	46.03
60	---	---	---	---	---	---	---	17.75	21.90	27.40	33.99	36.90	39.96	46.38
61	---	---	---	---	---	---	---	17.86	22.03	27.49	34.11	37.17	40.25	46.72
62	---	---	---	---	---	---	---	17.92	22.09	27.61	34.24	37.44	40.54	47.05
63	---	---	---	---	---	---	---	17.97	22.20	27.72	34.35	37.71	40.83	47.38
64	---	---	---	---	---	---	---	18.04	22.26	27.81	34.47	37.97	41.11	47.71
65	---	---	---	---	---	---	---	18.12	22.37	27.93	34.59	38.23	41.39	48.03
66	---	---	---	---	---	---	---	18.22	22.46	28.02	34.69	38.49	41.67	48.36
67	---	---	---	---	---	---	---	18.30	22.55	28.14	34.81	38.74	41.95	48.67
68	---	---	---	---	---	---	---	18.35	22.63	28.26	34.91	38.99	42.22	48.99
69	---	---	---	---	---	---	---	18.41	22.69	28.35	35.02	39.24	42.49	49.30
70	---	---	---	---	---	---	---	18.51	22.81	28.45	35.11	39.49	42.75	49.61
Oversized	---	---	---	---	---	---	---	50.54	54.00	57.16	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.62 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC presort discount, deduct $1.30 per piece.
7. For BMC presort discount, deduct $0.32 per piece.

Discount Parcels

Discount Parcels: Parcel Select

Parcel Select

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1,2]						Nonmachinable[1,2]						
			DBMC/ASF Zone					DSCF		DBMC/ASF Zone[4]			
	DDU	DSCF	1 & 2	3	4	5	DDU	5-Digit	3-Digit[3]	1 & 2	3	4	5
1	$1.44	$1.90	$2.41	$2.74	$3.08	$3.91	$1.44	$1.90	$2.91	$4.26	$4.59	$4.93	$5.76
2	1.50	2.11	2.70	3.38	4.02	4.67	1.50	2.11	3.12	4.55	5.23	5.87	6.52
3	1.56	2.29	2.99	3.99	4.86	5.41	1.56	2.29	3.30	4.84	5.84	6.71	7.26
4	1.61	2.46	3.26	4.56	5.58	6.08	1.61	2.46	3.47	5.11	6.41	7.43	7.93
5	1.67	2.62	3.52	5.10	6.10	6.71	1.67	2.62	3.63	5.37	6.95	7.95	8.56
6	1.71	2.77	3.76	5.59	6.53	7.27	1.71	2.77	3.78	5.61	7.44	8.38	9.12
7	1.76	2.91	3.99	6.04	6.92	7.81	1.76	2.91	3.92	5.84	7.89	8.77	9.66
8	1.80	3.05	4.21	6.49	7.28	8.29	1.80	3.05	4.06	6.06	8.34	9.13	10.14
9	1.84	3.18	4.42	6.90	7.66	8.74	1.84	3.18	4.19	6.27	8.75	9.51	10.59
10	1.88	3.30	4.62	7.31	8.48	9.16	1.88	3.30	4.31	6.47	9.16	10.33	11.01
11	1.92	3.43	4.81	7.70	8.81	9.54	1.92	3.43	4.44	6.66	9.55	10.66	11.39
12	1.96	3.54	5.00	8.07	9.13	9.91	1.96	3.54	4.55	6.85	9.92	10.98	11.76
13	1.99	3.66	5.18	8.41	9.43	10.25	1.99	3.66	4.67	7.03	10.26	11.28	12.10
14	2.03	3.77	5.36	8.67	9.76	10.56	2.03	3.77	4.78	7.21	10.52	11.61	12.41
15	2.06	3.88	5.53	8.95	10.02	10.85	2.06	3.88	4.89	7.38	10.80	11.87	12.70
16	2.10	3.99	5.69	9.16	10.28	11.15	2.10	3.99	5.00	7.54	11.01	12.13	13.00
17	2.13	4.10	5.86	9.35	10.56	11.40	2.13	4.10	5.11	7.71	11.20	12.41	13.25
18	2.16	4.20	6.00	9.54	10.79	11.65	2.16	4.20	5.21	7.85	11.39	12.64	13.50
19	2.19	4.30	6.16	9.71	11.03	11.89	2.19	4.30	5.31	8.01	11.56	12.88	13.74
20	2.22	4.40	6.31	9.89	11.23	12.10	2.22	4.40	5.41	8.16	11.74	13.08	13.95
21	2.25	4.50	6.45	10.07	11.41	12.31	2.25	4.50	5.51	8.30	11.92	13.26	14.16
22	2.28	4.59	6.60	10.22	11.60	12.50	2.28	4.59	5.60	8.45	12.07	13.45	14.35
23	2.31	4.68	6.73	10.40	11.77	12.71	2.31	4.68	5.69	8.58	12.25	13.62	14.56
24	2.34	4.78	6.87	10.55	11.93	12.88	2.34	4.78	5.79	8.72	12.40	13.78	14.73
25	2.37	4.86	7.01	10.70	12.08	13.06	2.37	4.86	5.87	8.86	12.55	13.93	14.91
26	2.39	4.95	7.13	10.82	12.23	13.21	2.39	4.95	5.96	8.98	12.67	14.08	15.06
27	2.42	5.04	7.27	10.99	12.37	13.37	2.42	5.04	6.05	9.12	12.84	14.22	15.22
28	2.44	5.12	7.38	11.15	12.49	13.51	2.44	5.12	6.13	9.23	13.00	14.34	15.36
29	2.47	5.20	7.51	11.28	12.65	13.64	2.47	5.20	6.21	9.36	13.13	14.50	15.49
30	2.49	5.29	7.63	11.41	12.76	13.79	2.49	5.29	6.30	9.48	13.26	14.61	15.64
31	2.52	5.36	7.75	11.51	12.86	13.92	2.52	5.36	6.37	9.60	13.36	14.71	15.77
32	2.54	5.44	7.86	11.65	12.98	14.05	2.54	5.44	6.45	9.71	13.50	14.83	15.90
33	2.57	5.52	7.98	11.76	13.10	14.15	2.57	5.52	6.53	9.83	13.61	14.95	16.00
34	2.59	5.60	8.09	11.88	13.19	14.27	2.59	5.60	6.61	9.94	13.73	15.04	16.12
35	2.61	5.67	8.20	12.00	13.31	14.38	2.61	5.67	6.68	10.05	13.85	15.16	16.23

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rates.
3. Rates include the $1.01 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
4. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Select

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1,2]						Nonmachinable[1,2]						
			DBMC/ASF Zone					DSCF		DBMC/ASF Zone[4]			
	DDU	DSCF	1 & 2	3	4	5	DDU	5-Digit	3-Digit[3]	1 & 2	3	4	5
36	---	---	---	---	---	---	$2.63	$5.74	$6.75	$10.18	$14.43	$15.25	$16.33
37	---	---	---	---	---	---	2.66	5.82	6.83	10.29	14.53	15.34	16.43
38	---	---	---	---	---	---	2.68	5.89	6.90	10.39	14.65	15.43	16.53
39	---	---	---	---	---	---	2.70	5.96	6.97	10.49	14.76	15.51	16.62
40	---	---	---	---	---	---	2.72	6.03	7.04	10.60	14.87	15.59	16.69
41	---	---	---	---	---	---	2.74	6.10	7.11	10.70	15.00	15.66	16.78
42	---	---	---	---	---	---	2.76	6.17	7.18	10.80	15.10	15.75	16.86
43	---	---	---	---	---	---	2.78	6.23	7.24	10.90	15.21	15.83	17.23
44	---	---	---	---	---	---	2.80	6.30	7.31	10.99	15.29	15.90	17.59
45	---	---	---	---	---	---	2.82	6.36	7.37	11.09	15.37	16.09	17.99
46	---	---	---	---	---	---	2.84	6.43	7.44	11.18	15.49	16.15	18.37
47	---	---	---	---	---	---	2.86	6.49	7.50	11.28	15.58	16.21	18.76
48	---	---	---	---	---	---	2.87	6.55	7.56	11.37	15.69	16.29	19.17
49	---	---	---	---	---	---	2.88	6.62	7.63	11.46	15.77	16.35	19.57
50	---	---	---	---	---	---	2.89	6.68	7.69	11.55	15.87	16.39	19.99
51	---	---	---	---	---	---	2.90	6.74	7.75	11.64	15.95	16.45	20.41
52	---	---	---	---	---	---	2.92	6.80	7.81	11.72	16.06	16.51	20.85
53	---	---	---	---	---	---	2.94	6.85	7.86	11.81	16.12	16.56	21.30
54	---	---	---	---	---	---	2.95	6.90	7.91	11.89	16.18	16.62	21.76
55	---	---	---	---	---	---	2.96	6.97	7.98	11.98	16.23	16.68	21.95
56	---	---	---	---	---	---	2.98	7.02	8.03	12.07	16.27	16.71	22.03
57	---	---	---	---	---	---	2.99	7.07	8.08	12.15	16.31	16.75	22.17
58	---	---	---	---	---	---	3.00	7.12	8.13	12.23	16.36	16.80	22.26
59	---	---	---	---	---	---	3.01	7.18	8.19	12.31	16.39	16.84	22.36
60	---	---	---	---	---	---	3.02	7.22	8.23	12.39	16.43	16.87	22.47
61	---	---	---	---	---	---	3.04	7.26	8.27	12.47	16.47	16.92	22.56
62	---	---	---	---	---	---	3.05	7.31	8.32	12.55	16.51	17.01	22.65
63	---	---	---	---	---	---	3.06	7.36	8.37	12.62	16.54	17.09	22.74
64	---	---	---	---	---	---	3.07	7.42	8.43	12.70	16.57	17.15	22.84
65	---	---	---	---	---	---	3.08	7.45	8.46	12.78	16.61	17.23	22.91
66	---	---	---	---	---	---	3.10	7.50	8.51	12.86	16.65	17.33	23.02
67	---	---	---	---	---	---	3.11	7.55	8.56	12.93	16.67	17.39	23.09
68	---	---	---	---	---	---	3.12	7.58	8.59	13.00	16.68	17.46	23.17
69	---	---	---	---	---	---	3.13	7.64	8.65	13.07	16.71	17.53	23.26
70	---	---	---	---	---	---	3.14	7.68	8.69	13.14	16.74	17.62	23.34
Oversized	---	---	---	---	---	---	7.36	13.53	13.53	21.48	29.49	39.77	41.33

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rates.
3. Rates include the $1.01 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
4. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Parcels

Discount Parcels: Media Mail

Media Mail

DISCOUNT PARCELS

Weight Not Over (pounds)	5-Digit	Basic[1]
1	$1.30	$1.69
2	1.68	2.07
3	2.06	2.45
4	2.44	2.83
5	2.82	3.21
6	3.20	3.59
7	3.58	3.97
8	3.96	4.35
9	4.34	4.73
10	4.72	5.11
11	5.10	5.49
12	5.48	5.87
13	5.86	6.25
14	6.24	6.63
15	6.62	7.01
16	7.00	7.39
17	7.38	7.77
18	7.76	8.15
19	8.14	8.53
20	8.52	8.91
21	8.90	9.29
22	9.28	9.67
23	9.66	10.05
24	10.04	10.43
25	10.42	10.81
26	10.80	11.19
27	11.18	11.57
28	11.56	11.95
29	11.94	12.33
30	12.32	12.71
31	12.70	13.09
32	13.08	13.47
33	13.46	13.85
34	13.84	14.23
35	14.22	14.61
36	$14.60	$14.99
37	14.98	15.37
38	15.36	15.75
39	15.74	16.13
40	16.12	16.51
41	16.50	16.89
42	16.88	17.27
43	17.26	17.65
44	17.64	18.03
45	18.02	18.41
46	18.40	18.79
47	18.78	19.17
48	19.16	19.55
49	19.54	19.93
50	19.92	20.31
51	20.30	20.69
52	20.68	21.07
53	21.06	21.45
54	21.44	21.83
55	21.82	22.21
56	22.20	22.59
57	22.58	22.97
58	22.96	23.35
59	23.34	23.73
60	23.72	24.11
61	24.10	24.49
62	24.48	24.87
63	24.86	25.25
64	25.24	25.63
65	25.62	26.01
66	26.00	26.39
67	26.38	26.77
68	26.76	27.15
69	27.14	27.53
70	27.52	27.91

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Discount Parcels: Library Mail

Discount Parcels

Library Mail

DISCOUNT PARCELS

Weight Not Over (pounds)	5-Digit	Basic[1]
1	$1.24	$1.61
2	1.60	1.97
3	1.96	2.33
4	2.32	2.69
5	2.68	3.05
6	3.04	3.41
7	3.40	3.77
8	3.76	4.13
9	4.12	4.49
10	4.48	4.85
11	4.84	5.21
12	5.20	5.57
13	5.56	5.93
14	5.92	6.29
15	6.28	6.65
16	6.64	7.01
17	7.00	7.37
18	7.36	7.73
19	7.72	8.09
20	8.08	8.45
21	8.44	8.81
22	8.80	9.17
23	9.16	9.53
24	9.52	9.89
25	9.88	10.25
26	10.24	10.61
27	10.60	10.97
28	10.96	11.33
29	11.32	11.69
30	11.68	12.05
31	12.04	12.41
32	12.40	12.77
33	12.76	13.13
34	13.12	13.49
35	13.48	13.85
36	$13.84	$14.21
37	14.20	14.57
38	14.56	14.93
39	14.92	15.29
40	15.28	15.65
41	15.64	16.01
42	16.00	16.37
43	16.36	16.73
44	16.72	17.09
45	17.08	17.45
46	17.44	17.81
47	17.80	18.17
48	18.16	18.53
49	18.52	18.89
50	18.88	19.25
51	19.24	19.61
52	19.60	19.97
53	19.96	20.33
54	20.32	20.69
55	20.68	21.05
56	21.04	21.41
57	21.40	21.77
58	21.76	22.13
59	22.12	22.49
60	22.48	22.85
61	22.84	23.21
62	23.20	23.57
63	23.56	23.93
64	23.92	24.29
65	24.28	24.65
66	24.64	25.01
67	25.00	25.37
68	25.36	25.73
69	25.72	26.09
70	26.08	26.45

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Periodicals

Outside-County—Excluding Science-of-Agriculture

POUND RATES
(Per pound or fraction)
Advertising portion:

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.181
DSCF	0.230
DADC	0.251
1&2	0.279
3	0.301
4	0.358
5	0.444
6	0.535
7	0.644
8	0.738

Nonadvertising portion:

Zone	Rate
DDU	$0.154
DSCF	0.193
DADC	0.210
Zones 1 to 8	0.232

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation**	**Automation**	**Nonautomation**
Carrier Route			
Saturation	---	---	$0.131
High Density	---	---	0.162
Basic	---	---	0.186
5-Digit	$0.214	$0.255	0.283
3-Digit	0.278	0.327	0.364
Basic	0.333	0.398	0.437

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00089.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.011.
- Destination ADC (DADC): $0.003.

Preferred Rate Discount: Authorized nonprofit and classroom mailers receive a discount of 5% off the total Outside-County postage excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber copies in excess of the 10% allowance in 707.7.0.

Outside-County—Science-of-Agriculture

POUND RATES
(Per pound or fraction)
Advertising portion:

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.136
DSCF	0.172
DADC	0.188
1&2	0.209
3	0.301
4	0.358
5	0.444
6	0.535
7	0.644
8	0.738

Nonadvertising portion:

Zone	Rate
DDU	$0.115
DSCF	0.144
DADC	0.157
Zones 1 & 2	0.174
Zones 3 to 8	0.232

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation**	**Automation**	**Nonautomation**
Carrier Route			
Saturation	---	---	$0.131
High Density	---	---	0.162
Basic	---	---	0.186
5-Digit	$0.214	$0.255	0.283
3-Digit	0.278	0.327	0.364
Basic	0.333	0.398	0.437

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00089.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.011.
- Destination ADC (DADC): $0.003.

Periodicals

In-County

POUND RATES

(Per pound or fraction)

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.142
None	0.179

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation**	**Automation**	**Nonautomation**
Carrier Route			
Saturation	---	---	$0.032
High Density	---	---	0.044
Basic	---	---	0.060
5-Digit	$0.051	$0.093	0.098
3-Digit	0.050	0.097	0.108
Basic	0.057	0.108	0.117

Destination delivery unit (DDU) discount for each addressed piece: $0.008.

Additional Rates

Outside County Container Rate—per pallet, sack, or tray (see 707.1.1.3 and 707.1.2.3): $0.85. For mail prepared under 707.23.4, *Exception to Sacking*, see 707.1.1.3c and 707.1.2.3c.

Ride-Along Rate—per Ride-Along piece: $0.155

Extra Services

CERTIFICATE OF MAILING

Individual Pieces	Fee
Individual article listing, per article (Form 3817)	$1.05
Duplicate copies of Form 3817 or mailing bill, per page	1.05
Firm mailing books (Form 3877), per piece listed (minimum 3)	0.35
Bulk Quantities	**Fee**
For first 1,000 pieces (or fraction thereof)	$5.50
Each additional 1,000 pieces (or fraction thereof)	0.60
Duplicate copy of Form 3606	1.05

CERTIFIED MAIL Fee—$2.65

COLLECT ON DELIVERY (COD)

Amount to be collected or insurance coverage desired, whichever is higher[1]	Fee
$0.01 to $50	$5.75
50.01 to 100	6.60
100.01 to 200	7.45
200.01 to 300	8.30
300.01 to 400	9.15
400.01 to 500	10.00
500.01 to 600	10.85
600.01 to 700	11.70
700.01 to 800	12.55
800.01 to 900	13.40
900.01 to 1,000	14.25
Additional COD Services	**Fee**
Restricted delivery[2]	$4.10
Notice of nondelivery	3.45
Alteration of COD charges	3.45
Designation of new addressee	3.45
Registered COD[3]	4.60

1. For Express Mail COD shipments valued at $100 or less, the COD fee is based on the amount to be collected. Express Mail insurance automatically provides up to $100 merchandise insurance.
2. Not available with Express Mail COD.
3. Regardless of amount to be collected or insurance value.

CONFIRM

USER FEE (INCLUDES 1 MILLION UNITS)
Annual—$5,000.00

ADDITIONAL ID CODES
Annual—$2,000.00
Quarterly—$750.00

ADDITIONAL BLOCKS OF 1 MILLION UNITS
1st to 9th—$70.00
10th to 99th—$35.00
100th or more—$17.50
Units are redeemed for Confirm scans at the rate of one unit per each First-Class Mail scan and five units per each scan of other mail classes.

CONFIRMATION SERVICES

Delivery Confirmation		Fee
First-Class Mail (parcels only)	Retail	$0.75
	Electronic	0.18
Priority Mail	Retail	0.65
	Electronic	0.00
Package Services (parcels only)[1]	Retail	0.75
	Electronic	0.18
Standard Mail (parcels only)	Electronic	0.18

1. No charge for Parcel Select electronic option.

Signature Confirmation		Fee
First-Class Mail (parcels only)	Retail	$2.10
	Electronic	1.75
Priority Mail	Retail	2.10
	Electronic	1.75
Package Services (parcels only)	Retail	2.10
	Electronic	1.75

INSURANCE

Express Mail Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee[1]
$0.01 to $100.00	$0.00
100.01 to 200.00	0.75
200.01 to 500.00	2.10
500.01 to 5,000.00	$2.10 plus $1.35 for each $500 or fraction thereof over $500

1. Express Mail merchandise maximum coverage: $5,000. Document reconstruction maximum liability: $100.

Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee[1]
$0.01 to $50	$1.65
50.01 to 100	2.05
100.01 to 200	2.45
200.01 to 300	4.60
300.01 to 400	5.50
400.01 to 500	6.40
500.01 to 600	7.30
600.01 to 5,000 (maximum liability is $5000)	$7.30 plus $0.90 per $100 or fraction thereof over $600 in declared value

1. Bulk insurance discount $0.80 per piece. (See 503.4.4 for eligibility.)

Extra Services

REGISTERED MAIL

Declared Value	Fee (in addition to postage)
$0.00	$11.95
0.01 to 100	12.70
100.01 to 500	14.00
500.01 to 1,000	15.35
1,000.01 to 2,000	16.70
2,000.01 to 3,000	18.05
3,000.01 to 4,000	19.40
4,000.01 to 5,000	20.75
5,000.01 to 6,000	22.10
6,000.01 to 7,000	23.45
7,000.01 to 8,000	24.80
8,000.01 to 9,000	26.15
9,000.01 to 10,000	27.50
10,000.01 to 11,000	28.85
11,000.01 to 12,000	30.20
12,000.01 to 13,000	31.55
13,000.01 to 14,000	32.90
14,000.01 to 15,000	34.25
15,000.01 to 16,000	35.60
16,000.01 to 17,000	36.95
17,000.01 to 18,000	38.30
18,000.01 to 19,000	39.65
19,000.01 to 20,000	41.00
20,000.01 to 21,000	42.35
21,000.01 to 22,000	43.70
22,000.01 to 23,000	45.05
23,000.01 to 24,000	46.40
24,000.01 to 25,000	47.75

Declared Value	Fee (in addition to postage) [1]
$25,000.01 to $1,000,000	$47.75 + handling charge of $1.35 per each $1,000 or fraction thereof over first $25,000
$1,000,000.01 to $15,000,000	$1,364.00 + handling charge of $1.35 per each $1,000 or fraction thereof over first $1,000,000
Over $15,000,000	$20,264.00 + amount determined by USPS based on weight, space, and value

Additional Services	Fee (in addition to postage)
COD Collection Charge (maximum amount collectible is $1000)	$4.60
Restricted Delivery	4.10
Return Receipts, requested at time of mailing showing to whom, signature, date of delivery, and addressee's address (if different)	2.15
Return Receipts, requested after mailing showing only to whom and date delivered	3.80

1. Fees for articles valued over $25,000 are for handling only. Maximum amount of insurance coverage available is $25,000.

RESTRICTED DELIVERY

Fee, per item, in addition to postage and other fees—$4.10

RETURN RECEIPT FOR MERCHANDISE (FORM 3804)

Requested at time of mailing—$3.50
Delivery record—$3.80

SPECIAL HANDLING

Weight	Fee
Not more than 10 pounds	$6.90
More than 10 pounds	9.60

RETURN RECEIPT

Return Receipt (Form 3811 in conjunction with another service)	Fee
Requested at time of mailing (receive by mail)	$2.15
Requested at time of mailing (receive electronically)	0.85
Requested after mailing (Form 3811-A) (receive by fax, mail, or e-mail)	3.80

Fees

Recipient Services

CALLER SERVICE

Fee Group	For Each Separation Provided Per Semiannual (6-month) Period Fee
1	$630.00
2	550.00
3	485.00
4	475.00
5	465.00
6	415.00
7	370.00
Additional Fees and Services	
For each reserved call number, per calendar year	$38.00

POST OFFICE BOX SERVICE

Fee Group	Box Size and Fee per Semiannual (6-month) Period 1	2	3	4	5
1	$42.00	$64.00	$118.00	$242.00	$390.00
2	35.00	54.00	94.00	184.00	326.00
3	28.00	46.00	84.00	150.00	250.00
4	20.00	34.00	52.00	102.00	196.00
5	18.00	26.00	48.00	88.00	148.00
6	13.00	20.00	35.00	62.00	110.00
7	10.00	16.00	28.00	48.00	86.00
E[1]	0.00	0.00	0.00	0.00	0.00
Additional Fees and Services					
Deposit per key issued					$1.00
Key duplication or replacement (after first 2 keys), each					6.00
Post office box lock replacement, each					14.00

1. Eligibility and location determined by USPS.

PREMIUM FORWARDING SERVICE

Enrollment fee—$10.00
Weekly reshipment charge—$11.65

Mailer Services

ADDRESS CORRECTION SERVICE

Per manual notice issued:—$0.50

Per electronic notice issued:
- First-Class Mail—$0.06
- Other than First-Class Mail—$0.25

Per automated correction:
- First-Class Mail letters (first two notices)—$0.00
- First-Class Mail letters (per additional notice)—$0.05
- Standard Mail letters (first two notices)—$0.02
- Standard Mail letters (per additional notice)—$0.15

ADDRESS SEQUENCING SERVICE

Per card removed by the USPS for an incorrect or undeliverable address or added for a missing or new address—$0.33

BULK PARCEL RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee—$550.00
Per piece returned, regardless of weight—$2.10
For Standard Mail machinable parcels only.

MERCHANDISE RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee (for advance deposit account)—$550.00

PICKUP SERVICE FEE

For Express Mail, Priority Mail, and Parcel Post:
Per Pickup on Demand or Custom Designed delivery stop—$14.25

SHIPPER PAID FORWARDING

Annual account maintenance fee—$550.00
For Standard Mail machinable parcels only.

BUSINESS REPLY MAIL

Business Reply Mail (BRM)[1]	High Volume	Basic
Annual permit fee	$175.00	$175.00
Annual account maintenance fee	550.00	None
1-ounce letter rate + per piece[2]	0.42 + 0.08	0.42 + 0.70
Card rate + per piece	0.27 + 0.08	0.27 + 0.70
Qualified Business Reply Mail (QBRM)	**High Volume**	**Basic**
Annual permit fee	$175.00	$175.00
Annual account maintenance fee	550.00	550.00
Quarterly fee	1800.00	None
1-ounce letter rate + per piece[3]	0.395 + 0.009	0.395 + 0.05
Card rate + per piece	0.245 + 0.009	0.245 + 0.05

1. For nonletter-size BRM, see 507.8.0.
2. $0.20 each additional ounce; apply Priority Mail rates for pieces over 13 ounces.
3. Second ounce or fraction—$0.20.

Mailer Services

MAILING LIST SERVICE

Service		Fee
For correction of name and address on occupant lists	per name on list	$0.33
	minimum per list (30 items)	9.90
For sorting mailing lists on cards by 5-digit ZIP Code	per 1,000 addresses or fraction	110.00
For address changes provided to election boards and voter registration commissions	per Form 3575	0.32

PARCEL RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee—$550.00

PARCEL RETURN SERVICE—RETURN DELIVERY UNIT

LENGTH PLUS GIRTH	RATE
Not over 108 inches	$2.32
Oversized (Over 108 inches up to 130 inches)	8.28

PARCEL RETURN SERVICE—RETURN BMC MACHINABLE

Weight Not Over (pounds)[1]	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	$2.42	$2.45	$2.52	$2.82
2	3.09	3.13	3.22	3.58
3	3.71	3.75	3.86	4.32
4	4.12	4.33	4.49	4.99
5	4.49	4.82	5.01	5.62
6	4.74	5.28	5.44	6.18
7	4.93	5.69	5.85	6.72
8	5.65	6.08	6.25	7.20
9	5.82	6.44	6.64	7.65
10	6.04	6.81	7.39	8.07
11	6.19	7.13	7.72	8.45
12	6.38	7.44	8.04	8.82
13	6.55	7.71	8.34	9.16
14	6.71	7.97	8.67	9.47
15	6.84	8.24	8.93	9.76
16	6.98	8.47	9.19	10.06
17	7.15	8.68	9.47	10.31
18	7.26	8.87	9.70	10.56
19	7.42	9.06	9.94	10.80
20	7.54	9.23	10.14	11.01
21	7.66	9.41	10.32	11.22
22	7.79	9.56	10.51	11.41
23	7.90	9.77	10.68	11.62
24	8.00	9.91	10.87	11.79
25	8.11	10.07	11.03	11.97
26	8.23	10.21	11.20	12.12
27	8.34	10.37	11.33	12.28
28	8.42	10.52	11.45	12.42
29	8.53	10.68	11.58	12.55
30	8.64	10.80	11.71	12.71
31	8.74	10.91	11.82	12.88
32	8.86	11.05	11.95	12.98
33	8.93	11.18	12.05	13.12
34	9.04	11.28	12.16	13.21
35	9.11	11.42	12.25	13.33

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).

Mailer Services

PARCEL RETURN SERVICE—RETURN BMC NONMACHINABLE

Weight Not Over (pounds)[1,2]	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	$4.27	$4.30	$4.37	$4.67
2	4.94	4.98	5.07	5.43
3	5.56	5.60	5.71	6.17
4	5.97	6.18	6.34	6.84
5	6.34	6.67	6.86	7.47
6	6.59	7.13	7.29	8.03
7	6.78	7.54	7.70	8.57
8	7.50	7.93	8.10	9.05
9	7.67	8.29	8.49	9.50
10	7.89	8.66	9.24	9.92
11	8.04	8.98	9.57	10.30
12	8.23	9.29	9.89	10.67
13	8.40	9.56	10.19	11.01
14	8.56	9.82	10.52	11.32
15	8.69	10.09	10.78	11.61
16	8.83	10.32	11.04	11.91
17	9.00	10.53	11.32	12.16
18	9.11	10.72	11.55	12.41
19	9.27	10.91	11.79	12.65
20	9.39	11.08	11.99	12.86
21	9.51	11.26	12.17	13.07
22	9.64	11.41	12.36	13.26
23	9.75	11.62	12.53	13.47
24	9.85	11.76	12.72	13.64
25	9.96	11.92	12.88	13.82
26	10.08	12.06	13.05	13.97
27	10.19	12.22	13.18	14.13
28	10.27	12.37	13.30	14.27
29	10.38	12.53	13.43	14.40
30	10.49	12.65	13.56	14.56
31	10.59	12.76	13.67	14.73
32	10.71	12.90	13.80	14.83
33	10.78	13.03	13.90	14.97
34	10.89	13.13	14.01	15.06
35	10.96	13.27	14.10	15.18
36	11.08	13.41	14.23	15.33
37	11.17	13.50	14.31	15.40
38	11.22	13.59	14.37	15.46
39	11.29	13.69	14.43	15.52
40	11.34	13.75	14.47	15.59
41	11.43	13.86	14.52	15.65
42	11.46	13.93	14.58	15.70
43	11.51	14.01	14.64	15.73
44	11.58	14.08	14.69	15.77
45	11.62	14.14	14.87	15.82
46	11.70	14.23	14.91	15.85
47	11.76	14.28	14.94	15.89
48	11.80	14.37	14.97	15.93
49	11.87	14.44	15.00	15.96
50	$11.88	$14.50	$15.03	$16.00
51	11.97	14.55	15.06	16.05
52	12.01	14.65	15.10	16.08
53	12.03	14.69	15.11	16.12
54	12.09	14.71	15.15	16.15
55	12.13	14.74	15.18	16.19
56	12.18	14.76	15.21	16.23
57	12.24	14.76	15.21	16.27
58	12.29	14.79	15.23	16.31
59	12.33	14.80	15.25	16.35
60	12.39	14.81	15.25	16.38
61	12.43	14.82	15.28	16.42
62	12.47	14.83	15.34	16.45
63	12.52	14.83	15.40	16.50
64	12.57	14.83	15.43	16.54
65	12.60	14.87	15.48	16.57
66	12.66	14.87	15.54	16.61
67	12.71	14.88	15.61	16.65
68	12.71	14.88	15.64	16.68
69	12.78	14.88	15.70	16.73
70	12.82	14.88	15.75	16.77
Oversized	30.09	30.48	31.32	32.59

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Rates include the $1.85 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at the oversized rates.

Other Fees and Charges

ANNUAL MAILING FEES (per 12-month period)

First-Class Mail Presort, per office of mailing—$175.00
Standard Mail—$175.00
Parcel Select—$175.00
Presorted Media Mail—$175.00
Presorted Library Mail—$175.00
Bound Printed Matter (destination entry)—$175.00

DETACHED ADDRESS LABELS

For ECR saturation Standard Mail:
Per detached address label—$0.015

PARCEL AIRLIFT (PAL)

Weight not more than 2 pounds—$0.50
Weight not more than 3 pounds—$1.00
Weight not more than 4 pounds—$1.45
Weight not more than 30 pounds—$2.00

PERIODICALS APPLICATION FEES

Original entry—$500.00
Additional entry—$75.00
Reentry—$55.00
Registration for news agents—$45.00

PERMIT IMPRINT

Application fee—$175.00

MONEY ORDERS

Service	Fee
Domestic money order, $0.01 to $500	$1.10
Domestic money order, $500.01 to $1000	1.50
Postal military money order (issued by military facilities)	0.30
Inquiry fee (includes the issuance of a copy of a paid money order)	5.00
Maximum amount per money order—$1000	

PLAIN STAMPED ENVELOPES

Fee, in addition to the postage value preprinted on the envelope:

TYPE	FEE	
	Each	500
Size 6-3/4	$0.09	$14.50
Size 10	0.09	16.50

PERSONALIZED STAMPED ENVELOPES

Fee, in addition to the postage value preprinted on the envelope:

TYPE	FEE	
	50	500
Size 6-3/4	$4.25	$20.00
Size 10	4.25	23.00

STAMPED CARDS

Fee, in addition to the postage value preprinted on the card:

TYPE	FEE
Single Card	$0.02
Double Card	0.04
Sheet of 40 cards (uncut)	0.80

REPOSITIONABLE NOTES

First-Class Mail letters and flats—$0.005
Periodicals letters and flats—$0.015
Standard Mail letters and flats—$0.015

Postal Explorer

pe.usps.com

Publications

Up-to-date Domestic Mail Manual, Quick Service Guides, International Mail Manual, and more.

Rate Calculators

Use the retail and business rate calculators to compute rates.

Domestic Rate Charts

Rates and Fees Reference is available as a PDF and HTML document.

Zone Charts

Access up-to-date National Zone Charts.

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Federal Register

Wednesday,
September 27, 2006

Part III

Department of Commerce

Economic Development Administration

13 CFR Chapter III

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision; Final Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 05072910–6229–06]

RIN: 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: On August 11, 2005, the Economic Development Administration (''EDA'') published an interim final rule to reflect the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965, by the Economic Development Administration Reauthorization Act of 2004. A ninety-three (93) day public comment period followed the publication of the interim final rule, specifically from August 11, 2005 through November 14, 2005. On December 15, 2005, EDA published an interim final rule that amended certain provisions of the August 11, 2005 interim final rule. EDA received a large number of public comments on different portions of the August 11, 2005 interim final rule. This final rule responds to all substantive comments received during the public comment period and finalizes this rulemaking proceeding based on comments received during the public comment period.

DATES: This rule is effective as of September 27, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005 (the ''*Interim Final Rule*''). The Interim Final Rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (''*PWEDA*''), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756 (2004)) (the ''*2004 Act*''). In addition, the Interim Final Rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations. The Interim Final Rule provided for a public comment period from August 11, 2005 through October 11, 2005. EDA also held a public hearing on September 1, 2005 on the Interim Final Rule.

On September 30, 2005, EDA published a final rule (70 FR 57124) that extended the deadline for submitting public comments on the Interim Final Rule from October 11, 2005 until November 14, 2005. The September 30, 2005 final rule also delayed the effective date, from October 1, 2005 until November 14, 2005, of (i) § 304.2(c)(2) of the Interim Final Rule, pertaining to membership requirements of a District Organization's governing body; and (ii) § 301.4 of the Interim Final Rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. On November 14, 2005, EDA published another final rule (70 FR 69053) delaying the effective date of these provisions from November 14, 2005 until January 31, 2006. All other provisions of the Interim Final Rule became effective on October 1, 2005.

The conference report (H.R. Rep. No. 109–272, at 136–138 (2006) (Conf. Rep.); the ''*Conference Report*'') accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act (Pub. L. 109–108, 119 Stat. 2290 (2005)) (the ''*2006 Appropriations Act*'') expressed Congressional intent as to specific provisions of the Interim Final Rule. On December 15, 2005, EDA published an interim final rule (70 FR 74193) to immediately effect only those changes to the Interim Final Rule specified in the Conference Report (the ''*December 15, 2005 Rulemaking*'').

After receiving extensive input from stakeholders, EDA is publishing this final rule to respond to all comments received during the public comment period on all aspects of the Interim Final Rule, and to make additional revisions. The majority of public comments were part of a mass mailing campaign, which resulted in EDA receiving hundreds of identical or nearly identical pieces of mail in a calendar month. For the most part, these comments expressed opinions on 13 CFR parts 300, 301, 302, 303, 304 and 307. This final rule also explains changes made to the Interim Final Rule in response to the Congressional recommendations set forth in the Conference Report and effected by the December 15, 2005 Rulemaking. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the Interim Final Rule (*see, e.g.*, 13 CFR 300.3, 303.2, 307.8, 314.1 and 315.2). Specifically, this final rule makes the following revisions to the Interim Final Rule:

Part 300—General Information

Part 300 of the regulations specifically states EDA's mission and highlights the policies and practices that EDA employs in order to attract private capital investments and higher-skill, higher-wage jobs to those Regions experiencing substantial and persistent economic distress. In drafting the Interim Final Rule, the main revisions occurred in § 300.3, in which EDA introduced several new terms and revised existing terms. Anticipating that an improved section of definitions would assist readers in better understanding EDA's policies and requirements, EDA increased the number of defined terms to ensure clarity, consistency and technical precision.

This final rule further revises part 300 of the Interim Final Rule by inserting the word ''development'' between the words ''economic'' and ''agenda'' in the second sentence in § 300.1, to clarify that EDA's mission is to lead sustainable economic development throughout the United States.

EDA received one comment expressing difficulty in understanding the difference between the definitions of ''*District Organization*'' and ''*Economic Development District.*'' EDA believes that both terms are explained clearly in the Interim Final Rule and, therefore, this final rule does not amend these terms. A District Organization is any organization that meets the requirements of § 304.2. The definition of Economic Development District conveys that EDA may (at the request of a District Organization) designate a geographic area, or a ''*Region*,'' as an Economic Development District if the Region satisfies the requirements of § 304.1. This final rule adds a minor clarifying point to the definition of Economic Development District to make clear that Districts designated prior to the effective date of the Interim Final Rule would have been designated pursuant to a previous version of this regulation at 13 CFR part 302.

We received five comments that stated the following: ''Part 300 eliminates the EDD designation and replaces it with 'District Organization' and specifically adds reference to 'community or faith-based non-profit organization.' With numerous unfunded and under-funded EDDs around the nation[,] expanding the number of new

eligible recipients is not prudent use of already limited funding.'' The Interim Final Rule replaced the reference to an Economic Development District in the definition of ''*Eligible Recipient*'' with the term ''District Organization'' because a District Organization may apply for and receive EDA Investment Assistance. In contrast, an Economic Development District is a geographic description and cannot apply for EDA Investment Assistance until it establishes a structure to give voice to the interests in that Region. EDA has included faith-based organizations in its investment portfolio since approximately 1969; therefore, the Interim Final Rule did not expand the number of new Eligible Recipients. Rather, the Interim Final Rule demonstrates EDA's commitment to making its programs fully available to community and faith-based organizations by specifically identifying these non-profit organizations as Eligible Recipients. For these reasons, this final rule does not amend the definition of Eligible Recipient.

This final rule replaces the lead-in statement for the defined term Eligible Recipient to ''Eligible Recipient means any of the following:'', and clarifies that a consortium of Indian Tribes is qualified to be an Eligible Recipient, similar to consortia of political subdivisions and institutions of higher education. EDA did not intend to exclude a consortium of Indian Tribes from the definition of Eligible Recipient; this language was inadvertently dropped from the text of the Interim Final Rule. Additionally, the definition of ''*In-Kind Contributions*'' is revised by replacing the phrase ''Uniform Administrative Requirements of 15 CFR parts 14 and 24 (as applicable)'' with the phrase ''requirements of 15 CFR parts 14 or 24, as applicable.'' This final rule also expands the definition of ''*Indian Tribe*'' to include a non-profit Indian corporation, Indian authority and other non-profit Indian tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the Indian tribe. This language was inadvertently dropped in the Interim Final Rule. EDA makes expressly clear that these types of organizations are included in the definition of Indian Tribe, consistent with the definition of Indian Tribe in EDA's former regulations.

EDA received no public comments on the defined term ''*Private Sector Representative*'' in the Interim Final Rule. However, the Conference Report accompanying the 2006 Appropriations Act included a specific direction by Congress for EDA to expand the definition of Private Sector Representative. Accordingly, the December 15, 2005 Rulemaking expanded the definition to include a designee of any senior management official or executive holding a key decision-making position in any for-profit enterprise.

EDA received one question regarding ''whether the other Federal grant programs will allow EDA funds to match their programs.'' Section 205 of PWEDA (42 U.S.C. 3145) and § 301.6 of the Interim Final Rule authorize EDA to supplement a grant awarded in another designated Federal grant program up to the amount of the maximum allowable EDA investment rate, even if the other Federal grant program has a lower grant rate. An applicant should contact the Federal Agency making the grant award to determine if its governing statute conflicts with PWEDA.

EDA received approximately 84 identical comments stating, ''While we appreciate the theory and practice of forging local partnerships based on shared economic interests of a 'region,' the creation of competing regional boundaries and definitions is confusing and misleading.'' This final rule does not amend the definition of Region or the term ''*Regional*'' because it sufficiently explains that self-sustained economic development should occur across communities and political boundaries. EDA believes that Regional partnerships, with human, natural, technological and capital components, are essential to the economic competitiveness of a Region.

EDA received one comment on the definition of ''*Special Need*'' in § 300.3. The commenter noticed a discrepancy between the phrase ''closure or restructuring of industrial firms'' in the definition of Special Need and the phrase ''loss of a major community employer'' in the list of circumstances set forth in § 307.1. In response to this comment, this final rule adds to the definition of Special Need the circumstance of a Region losing a major employer.

Part 301—Eligibility, Investment Rate and Proposal and Application Requirements

Part 301 of the regulations sets forth eligibility, maximum allowable Investment Rate levels, and proposal and application requirements common to all PWEDA-enumerated programs (excluding Trade Adjustment Assistance for Firms at part 315). Part 301 presents these requirements in a more logical sequence than EDA's former regulations and provides the user with a helpful roadmap to navigate through these threshold issues.

In general, subpart A presents an overview of eligibility requirements, subpart B addresses applicant eligibility, subpart C addresses Regional economic distress level requirements, subpart D sets forth the maximum allowable Investment Rates and corresponding Matching Share requirements for various Projects, and subpart E addresses the proposal and application requirements, as well as the evaluation criteria used by EDA in selecting Projects.

The economic distress criteria referenced in § 301.3(a) for Projects under parts 305 and 307 track sections 301 and 405 of PWEDA (42 U.S.C. 3161 and 3175). EDA received one comment stating that, ''Requiring the per capita income to be eighty (80) percent or less of the national average [per capita income] will result in ineligibility of distressed areas located in higher income areas such as the northeast United States.'' This final rule does not amend § 301.3(a)(1)(ii) because it reflects the statutory provision set forth in section 301(a)(1) of PWEDA (42 U.S.C. 3161), which provides that for a Project to be eligible for a Public Works or Economic Adjustment Assistance Investment, the Project must be located in a Region that meets one or more of the following economic distress criteria: (i) Per capita income of 80 percent or less of the national average; (ii) an unemployment rate that is at least one percent greater than the national average; or (iii) a Special Need, as determined by EDA.

EDA received approximately 100 identical or nearly identical comments on § 301.3(a)(4)(i), which provides that EDA will determine economic distress levels according to unemployment rates or per capita income levels based upon the most recent American Community Survey (''ACS'') published by the U.S. Census Bureau for (i) the applicable Region where the Project will be located (for Projects seeking to qualify under § 301.3(a)(1)), (ii) the geographic area where substantial direct Project benefits will occur (for Projects seeking to qualify under § 301.3(a)(2)), or (iii) the geographic area of poverty or unemployment (for Projects seeking to qualify under § 301.3(a)(3)). These comments stated, ''While we support the concept of the ACS tool, the vast majority of the nation's small metropolitan and rural communities are years away from having access to ACS data.''

While EDA understands that the ACS is still not available for some geographies (*e.g.,* census tracts,

townships, or certain cities and counties), EDA believes that the ACS is the most accurate and reliable metric currently available to measure the economic distress of a Region (or other geographic area). Where a recent ACS is not yet available, or will not be available, the regulation makes clear that EDA will use the most recent Federal data from other sources, including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or any other Federal source determined by EDA to be appropriate. For improved clarity and understanding, this final rule amends the last sentence in § 301.3(a)(4)(i) by rephrasing ''the most recent data available through the government of the State in which the Region is located'' as ''the most recent data available from the State.''

For economic distress based upon a Special Need, EDA will conduct an independent analysis of the facts and circumstances in a given case. *See* § 301.3(a)(4)(ii).

Section 301.4 reflects the new Investment Rate determination structure in section 204 of PWEDA (42 U.S.C. 3144; *see also* sections 205 and 206 of PWEDA (42 U.S.C. 3145 and 3146)). Generally, as stated in section 204(a) of PWEDA and in § 301.4(b)(1), the maximum Investment Rate for a Project must not exceed the sum of fifty (50) percent, plus an additional thirty (30) percent, based on the ''relative needs'' of the Region where the Project is located.

EDA received approximately 812 identical or nearly identical comments on the Investment Rate provisions for all EDA programs. The majority of these comments stated: ''We are very concerned about changes to EDA matching rates for all agency investments, including planning grants, public works investments and economic adjustment assistance. We fear the increased costs to our local communities for both EDA planning grants and infrastructure projects will put our future economic progress in jeopardy.'' We received approximately 153 comments that opposed the change in EDA Investment Rates for Planning grants only. These comments stated that the ''new range from a minimum of 30% Federal to 70% local to a maximum of 80% Federal and 20% local'' is likely to put a greater financial burden on rural local governments. The December 15, 2005 Rulemaking addressed these two sets of comments, as described in detail below.

In the Interim Final Rule, EDA provided maximum allowable Investment Rate categories of 30% and 40% for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress. The Conference Report accompanying the 2006 Appropriations Act directed EDA to revise this regulation. Accordingly, the December 15, 2005 Rulemaking provided that Projects located in Regions demonstrating (i) a 24-month unemployment rate at least 1% greater than the national average or (ii) per capita income not more than 80% of the national average will be eligible to receive a maximum allowable Investment Rate of 50%. This revision eliminated the 30% and 40% maximum allowable Investment Rate categories. The higher threshold levels of economic distress for the 60%, 70% and 80% maximum allowable Investment Rate categories remain the same as provided in the Interim Final Rule.

The December 15, 2005 Rulemaking also revised § 301.4(b) to the extent that it applies to Planning Investments, by placing a subsection titled *Projects under part 303* at § 301.4(b)(3), which includes the following provisions for determining the Investment Rates for Planning Investments: (i) All Planning Investments will receive a minimum Investment Rate of 50%; (ii) except as otherwise provided in section 204(c) of PWEDA (42 U.S.C. 3144) and § 301.4(b)(5), the maximum allowable Investment Rate for Planning Investments will be the maximum allowable Investment Rate set forth in Table 1 of § 301.4 for the most economically distressed county or other equivalent political unit (*e.g.,* parish) within the Region; (iii) the maximum allowable Investment Rate will not exceed 80%; and (iv) in compelling circumstances, the Assistant Secretary may waive the requirement in paragraph (ii) above. The Assistant Secretary cannot delegate the authority to grant this waiver.

This final rule revises § 301.4(b)(2) by replacing the phrase ''paragraphs (b)(3) and (4)'' with ''paragraph (b)(5).'' References to paragraphs (b)(3) and (b)(4) were inapplicable in the Interim Final Rule, as Special Need Projects concern Investments under parts 305 and 307 only. Such Projects are, however, eligible for a maximum allowable Investment Rate of one hundred (100) percent under § 301.4(b)(5). For subject-verb agreement, this final rule also revises Table 2 of § 301.4 by amending the phrase ''Projects of non-profit organizations that the Assistant Secretary determines has exhausted its effective borrowing capacity'' to ''Projects of non-profit organizations that the Assistant Secretary determines *have* exhausted *their* effective borrowing capacity.''

Additionally, this final rule revises § 301.7 by replacing the phrase ''an EDA Pre-application for Federal Assistance'' with the phrase ''a Pre-application for Investment Assistance.'' This amendment corresponds to a similar change EDA made to the title of its pre-application (Form ED–900P) after publication of the Interim Final Rule. This final rule also designates the paragraph under § 301.7 as (a) and re-designates provisions (a), (b) and (c) as (1), (2) and (3), in order to add a second paragraph (b) which states that for certain programs, EDA may instruct an Eligible Applicant to submit an application for Investment Assistance in lieu of the pre-application for Investment Assistance. EDA adds this provision to ensure clarity regarding EDA's proposal and application requirements.

To clarify the distinction between proposal evaluation criteria and proposal selection criteria, this final rule deletes the third sentence in § 301.8 in its entirety, and replaces the phrase ''the applicable FFO'' in § 301.9(a)(3) with ''the funding priority considerations identified in the applicable FFO.'' In the lead-in statement to paragraphs (a) through (e) of § 301.8, we also replace the word ''may'' with ''will,'' to have consonant wording with relevant FFOs. This final rule also adds the word ''criteria'' to the title of § 301.9.

Part 302—General Terms and Conditions for Investment Assistance

Part 302 sets forth the general terms and conditions for EDA Investment Assistance. The majority of provisions in this part were transferred from part 316 of EDA's former regulations. Part 302 applies to all Investments under PWEDA and certain provisions, such as § 302.5, apply to the Trade Adjustment Assistance for Firms program under the Trade Act (*see* part 315). This part covers a variety of EDA requirements for Investment Assistance, including environmental reviews of Projects, relocation assistance and land acquisition requirements, inter-governmental review of Projects, and Recipients' reporting, record-keeping, post-approval and civil rights requirements. EDA received no public comments on §§ 302.1 through 302.15 of the Interim Final Rule. For consistency throughout the chapter, this final rule amends the last sentence in § 302.1 by replacing the phrase ''annual FFO'' with ''applicable FFO.'' This final rule makes

no further revisions to §§ 302.1 through 302.15.

EDA received approximately 109 identical or nearly identical comments on § 302.16(b) of the Interim Final Rule, in connection with Recipients' reporting requirements. This section implements section 212 of PWEDA (42 U.S.C. 3152), which requires recipients to submit reports that contain an evaluation of the effectiveness of the investment assistance provided under PWEDA. These comments expressed concern ''about the new requirement that all performance data and information submitted by grantees be from independent sources.'' Subsection 302.16(b) provides that data used by Recipients in preparing reports must be accurate and verifiable, as determined by EDA, and must come from independent sources (whenever possible). While EDA appreciates that locating independent sources has time and cost implications, we believe it is very important that the data used by a Recipient is verified when possible by a reliable source independent of the Recipient. The Recipient is the primary source for information on the effectiveness of the Investment Assistance provided and fulfillment of the objectives of PWEDA, and therefore, reported data must be accurate and verifiable as determined by EDA. Whenever possible, the Recipient should cross-check these data with an independent secondary source to avoid conscious or unconscious biases and errors. For the reasons stated above, this final rule does not change § 302.16(b).

Section 302.17 of the regulations states EDA's conflicts of interest policy. In the Interim Final Rule, EDA moved the conflicts of interest provisions for revolving loan fund (*''RLF''*) Grants from § 308.15(e) of EDA's former regulations to § 302.17(c) to improve organization and referencing facility. EDA received approximately 87 identical or nearly identical comments on § 302.17(c)(3), which provides that former board members of a Recipient of an RLF Grant and members of his or her Immediate Family cannot receive a loan from the RLF for a period of two years from the date that the board member last served on the RLF's board of directors. Generally, these comments expressed opposition to ''the change in the waiting period from one year to two years, along with the elimination of the 'exemption clause' with [regard to] public disclosure.'' Some comments also expressed concern that § 302.17(c)(3) ''place[s] an undue burden on those individuals that serve in the local public arena and are now unable to participate in the RLF for a proposed two year period.''

EDA does not intend for § 302.17(c)(3) to burden or penalize local community business participants for their membership on a District Organization's governing body or on an RLF Recipient's board of directors. We increased the one-year period to a two-year period in § 302.17(c)(3) to be consistent with section 606 of PWEDA (42 U.S.C. 3216), which directs an Eligible Applicant to execute a binding agreement, for the two-year period beginning on the date on which the Investment Assistance is awarded, requiring it to refrain from employing, offering any office or employment to, or retaining for professional services, certain persons associated with EDA or the Department. Because of the importance of section 606 of PWEDA, EDA's formal application for Investment Assistance includes a certification that must be signed by an authorized official of the Eligible Applicant.

Similarly, § 302.17(c)(3) prohibits the conduct of any business (*e.g.*, the issuance of an RLF loan) by a former RLF Recipient board member and the RLF Recipient for a two-year period after leaving the board member position. As a general matter, if a potential or actual conflict arises, a former RLF Recipient board member has a fiduciary duty to disclose the conflict. We removed the conflict waiver exception found in § 308.15(e) of EDA's former regulations because public disclosure of an actual or potential conflict, regardless of whether the benefit conferred is substantial or de minimus, can potentially damage the credibility of the RLF Recipient's decision-making process. The removal of the conflict waiver exception makes EDA's conflicts of interest rules for RLFs consistent with its general conflicts of interest policy (*see* § 302.17(a)). For these reasons, this final rule does not amend § 302.17(c)(3). EDA received no comments on the conflicts of interest provisions for the Trade Adjustment Assistance for Firms program, as set forth in § 315.15.

EDA received no public comments on §§ 302.18 through 302.20 of the Interim Final Rule. These sections of part 302 remain as provided in the Interim Final Rule.

Part 303—Planning Investments and Comprehensive Economic Development Strategies

Part 303 was revised in the Interim Final Rule to emphasize that results-driven implementation, not just the writing of a *''Comprehensive Economic Development Strategy''* (or *''CEDS''*), is vital to successful performance under EDA's Planning program. The CEDS is a crucial part of EDA's program portfolio and is required to be in place before a Recipient may receive a Public Works Investment or Economic Adjustment Assistance under parts 305 or 307. Part 303 discusses the application and award requirements for Planning Investments and the requirements for CEDS, State plans and short-term Planning Investments.

To ensure clarity, this final rule revises the first sentence in § 303.1 by amending the phrase ''related to short-term Planning Investments and State plans'' to ''and for related short-term Planning Investments and State plans.'' For consistency with the definition of Eligible Recipient in § 300.3, this final rule also amends the second sentence in § 303.1 by replacing the phrase ''Economic Development Districts'' with ''District Organizations.'' We received one comment stating that § 303.1 ''expand[s] eligibility for planning assistance to community development corporations and non-profit regional development organizations.'' EDA did not expand the list of Eligible Recipients for Planning Investments because public and private non-profit organizations already are included in the definition of Eligible Recipient in § 300.3. Rather, we included community development corporations and non-profit regional development organizations in our introductory discussion addressing the purpose and scope of Planning Investments.

We received approximately 130 identical comments expressing ''concern about several of the application requirements, including the primary focus on creating 'higher-skill, higher-wage jobs' and involving business leaders in every phase of the CEDS process.'' Section 303.1 states that the purpose of EDA Planning Investments in part includes assistance for short-term Planning Investments and State plans designed to create and retain higher-skill, higher-wage jobs. EDA believes this goal must be achieved particularly in the most economically distressed Regions, as that is where high levels of unemployment and underemployment exist. Additionally, in considering an application for a Planning Investment under § 303.3(a), EDA will consider the involvement of the Region's business leadership in the preparation of the CEDS, short-term planning activities, or in the development of State plans. In line with its goal of fostering Regional partnerships, EDA believes that communities and Regions must access expert resources and interact with business leaders and entrepreneurs in

order to improve their economy and to create private sector jobs.

EDA received approximately 136 identical comments on the definition of *''Planning Organization''* found in § 303.2, which expressed strong opposition to ''the removal of the specific reference to District Organizations and Indian tribes as the primary planning partners of the agency.'' The Interim Final Rule simplified the former definition of Planning Organization by replacing the references to Economic Development Districts and Indian Tribes with the term ''Recipient.'' The definition of Eligible Recipient in § 300.3 includes District Organizations and Indian Tribes; therefore, the definition of Planning Organization in § 303.2 involves no substantive change from EDA's former regulations. To clarify the functions of a Planning Organization, this final rule amends the definition of Planning Organization by inserting the phrase ''and implement'' after the word ''develop.''

EDA received two comments on the application requirements for Planning Investments set forth in § 303.3(a). The comments expressed, ''It seems redundant to require a 'pre-application' when seeking a planning grant, as mentioned in the interim final rule; it seems that this is unnecessary with the mid-year and annual reports required currently.'' The commenters questioned whether a pre-application for Investment Assistance is necessary for all Planning Investments. By adding a new subsection to § 301.7 as discussed in detail above, EDA makes it clear in this final rule that in certain circumstances, EDA may instruct an Eligible Applicant or Recipient to submit an application for Investment Assistance rather than a pre-application. To ensure that the title of § 303.3 conforms to its content, this final rule adds ''and evaluation criteria'' to the title. In addition, we restate the lead-in statement for paragraphs (a)(1) through (5) as ''In addition, applications for Planning Investments must include information about the following,'' and delete the phrase ''Quality of'' in paragraph (a)(1) to make clear that EDA requires Eligible Applicants to provide the information described in § 303.3(a) for all Planning Investment applications. We also make a grammatical revision to § 303.3(a)(5) by replacing the word ''during'' with ''through.''

Section 303.3(b) provides that funded Recipients will be evaluated on the extent of continuing distress within the Region, their past performance, and the overall effectiveness of their CEDS. For conformity with the revisions we make to § 303.3(a) in this final rule, we replace the phrase ''requirements of'' with ''criteria set forth in'' in § 303.3(b).

We received approximately 212 comments on § 303.4(c). The majority of these comments expressed ''concern about the lack of details on the funding of [P]lanning grants'' and stated that the Interim Final Rule is ''vague on the link between receiving a designation as a District Organization and annual and long-term financial support from EDA.'' EDA did not intend for § 303.4(c) to suggest that Investment Assistance to Planning Organizations would be ''one-time only'' awards. We fully expect to continue our successful partnership with Planning Organizations representing Economic Development Districts (as well as to fund designated but unfunded Districts). This final rule clarifies the regulation by stating that EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in ''thirty-six (36) month renewable Investment award periods.'' The phrase ''thirty-six (36) month renewable Investment award periods'' clarifies that the regulation contemplates continuation of EDA's historic relationship with Districts.

Consistent with the focus on obtaining a well-prepared and demonstrable CEDS, § 303.5 provides that Planning Investments may be used to pay only direct and indirect costs (administrative or otherwise) attributable to the development and implementation of a CEDS. EDA received approximately 279 identical or nearly identical comments on this provision, which expressed strong opposition to limiting direct and indirect costs to activities related to the CEDS. As provided in § 303.5(a), EDA determines allowable costs by reference to ''applicable Federal cost principles,'' namely, the following Office of Management and Budget (''*OMB*'') Circulars: Circular No. A–122 titled ''Cost Principles for Nonprofit Organizations'' (2 CFR part 230); Circular No. A–21 titled ''Cost Principles for Education Institutions'' (2 CFR part 220); and Circular No. A–87 titled ''Cost Principles for State, Local and Indian Tribal Governments'' (2 CFR part 225). Upon closer examination of § 303.5, EDA believes subsection (c) regarding allowable ''indirect costs'' is superfluous inasmuch as these costs would be eligible consistent with EDA's application of these OMB circulars to indirect cost rates. Therefore, this final rule removes § 303.5(c) in its entirety.

This final rule also removes § 303.5(b) in its entirety because the express statement that Planning Investments may only be used to pay the costs attributable to the EDA-approved scope of work (*i.e.*, for the purpose of developing and implementing a CEDS) does not distinguish Planning Investments from any other EDA Investment. Generally, all EDA Investment Assistance may be used to pay costs of activities that are directly attributable to the Project's scope of work. To ensure clarity and better understanding of the concepts explained above, this final rule reformats § 303.5 and revises the sentence to indicate that Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development, replacement or revision, and implementation of a CEDS and for related short-term planning activities. Rewritten in this manner, EDA believes § 303.5 is consistent with the Senate Report accompanying the 2004 Act, which states that authorized uses of funds under section 203 of PWEDA include ''administrative expenses to support the on-going formulation and implementation of comprehensive economic development strategies.'' S. Rep. No. 108–382, at 4 (2004).

Section 303.6(a) requires that a Strategy Committee (appointed by a Planning Organization) represent the main economic interests of the relevant Region by including a majority of its representatives from businesses within the Region. The Strategy Committee is tasked with developing (and revising or replacing as necessary) the Planning Organization's CEDS. EDA received approximately 585 identical or nearly identical comments on § 303.6(a), which expressed strong ''oppos[ition] to efforts [that] reduce the involvement and control of local government officials in strategic planning and development activities.'' In order to sustain long-term Regional economic growth, EDA believes that contributions from the private sector are paramount for the CEDS development. We do not believe this requirement is restrictive or that it minimizes local government participation in local development activities. Rather, when § 303.6(a) is read in its entirety, it requires that innovative public and private leaders create a strong sense of Regional cooperation in order to develop a viable CEDS.

We received one comment on § 303.6(c). This section requires Planning Organizations to be accountable to EDA for updated CEDS performance. The commenter opined that this provision ''does not go far enough,'' and stated that ''[t]here needs

to be some requirement that [Planning] [O]rganizations put a plan for self-sufficiency in each CEDS, and that they attain self-sufficiency within 10 years of first receiving EDA Investment Assistance.'' EDA does not intend to implement such a requirement absent Congressional authorization.

To improve the structure of § 303.7(a) and improve readability, this final rule amends the second sentence in § 303.7(a) by deleting the phrase '', and assigning lead organizations responsibilities for execution of the CEDS'' and placing ''and'' before the word ''identifying.'' We received one comment asking for EDA to define the word ''critical'' in the last sentence of § 303.7(a). This final rule does not revise this sentence in § 303.7(a) at this time because EDA believes it sufficiently relates that the creation of a successful CEDS depends heavily on its participants. If CEDS development galvanizes a partnership between business and government, it will play a ''critical'' or essential role in enabling and strengthening Regional economies.

Section 303.7(b) lists specific technical requirements related to the preparation of the CEDS document. These requirements include (i) a discussion of private sector participation in the CEDS work, rather than community participation, (ii) a specific plan of action with certain criteria for gauging the implementation of the goals and objectives of the CEDS, and (iii) specific performance measures for appraising the Planning Organization's development and execution of the CEDS. We received approximately 83 identical comments stating support of these requirements. The commenters stated that ''the new technical requirements of the CEDS process are sound and beneficial to local development efforts.'' This final rule amends § 303.7(b)(7) by replacing the phrase, ''A section identifying economic clusters that are growing or in decline within the Region'' with ''A section identifying economic clusters within the Region, focusing on those that are growing or in decline.'' We revise § 303.7(b)(7) as such to clarify that Planning Organizations should identify all economic clusters in the Region and specify those that are growing or in decline. For clarity, we also insert the word ''development'' after ''economic'' in § 303.7(b)(10).

Section 303.9 outlines EDA's requirements for short-term Planning Investment Assistance. This final rule amends § 303.9(c) by replacing the phrase ''program reports'' with ''progress reports,'' as the incorrect use of the word ''program'' in the Interim Final Rule was an oversight.

EDA received two comments expressing that part 303 ''focus[es] solely on the CEDS without clearly defining who will be responsible for implementation of the [CEDS].'' As noted earlier, the Strategy Committee is tasked with developing (and revising or replacing as necessary) the CEDS. EDA believes it is the responsibility of the District Organization as a whole to implement the technical elements of the CEDS, which are set forth in § 303.7(b).

We received one comment asking if there are any changes in the Interim Final Rule for Planning Investments to Indian Tribes. All Planning Investments, whether awarded to District Organizations, Indian Tribes, community development corporations, non-profit regional planning organizations or other Eligible Recipients (as listed in § 303.1), are governed by the requirements of part 303. The Interim Final Rule made no specific changes to this part with respect to Planning Investments to Indian Tribes. Investments to Indian Tribes are subject to the same requirements as other Eligible Recipients and the discussion in this preamble applies equally to them.

EDA received approximately 81 identical comments expressing concern that the Interim Final Rule is ''silent on the transition period and guidelines for thousands of local communities already covered by an existing CEDS, whether prepared by a District Organization, Indian [T]ribe or other [P]lanning [O]rganization.'' EDA does not believe that administrative or instructional guidelines on how Planning Organizations will transition to comply with the requirements of parts 303 and 304 belong in a set of regulations. This final rule does not amend the regulations at this time. However, EDA is cognizant that Recipients require a reasonable amount of time to comply with the new requirements. To that end, EDA is providing a one-year period for all Planning Organizations to demonstrate compliance with the requirements with parts 303 and 304. For all awards made in FY 2006, the Planning Organization must demonstrate compliance with all new requirements one year from the date of receiving EDA Investment Assistance.

Part 304—Economic Development Districts

Part 304 on Economic Development Districts (also referred to as a *''District''* or an *''EDD''* in § 300.3) sets forth the Regional eligibility requirements that must be satisfied in order for EDA to consider a District Organization's request to designate a Region as an EDD, including submission of an EDA-approved CEDS, and the District Organization's formation and organizational requirements. This part also contains provisions relating to termination and performance evaluations of District Organizations. As described in detail below, the December 15, 2005 Rulemaking revised sections in this part in accordance with the Conference Report accompanying the 2006 Appropriations Act.

All provisions with respect to formation, organization and operation of a District Organization are contained in § 304.2. EDA received over one thousand identical or nearly identical comments on the provision in § 304.2(c)(2), which requires a District Organization's governing body to include a majority of Private Sector Representatives (as defined in § 300.3). The majority of these comments ''adamantly opposed [ ] the new requirements that shift the governing bodies of [District Organizations] from the majority control of local government officials to unnamed private sector representatives.'' Section 304.2(c)(2) never became effective on October 1, 2005, as the September 30, 2005 and November 14, 2005 final rules delayed its effective date until January 31, 2006.

As directed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 304.2(c)(2) in the December 15, 2005 Rulemaking as follows: (i) A District Organization's governing body must, unless otherwise prohibited by applicable State or local law, include at least one (1) Private Sector Representative, together with one (1) or more of the following: Executive directors of chambers of commerce, or representatives of institutions of post-secondary education, workforce development groups, or labor groups, all of which (including the Private Sector Representative) must comprise in the aggregate a minimum of 35% of the District Organization's governing body; and (ii) if the District Organization demonstrates an inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence (as determined by EDA), the Assistant Secretary may waive the Private Sector Representative requirement. The December 15, 2005 Rulemaking also added a provision stating that the District Organization's governing body will also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

EDA received approximately 795 identical or nearly identical comments on § 304.2(d), which provides that District Organizations may contract for services to accomplish approved scopes of work for Planning Investments. The majority of these comments stated, ''We are specifically opposed to * * * minimizing local government participation in local planning and development activities.'' As directed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 304.2(d) in the December 15, 2005 Rulemaking to specify that a District Organization will engage in the full range of economic development activities listed in its EDA-approved CEDS, which may include (i) coordinating and implementing economic development activities in the District; (ii) carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and (iii) coordinating the development and implementation of the CEDS with other local, State, Federal and private organizations. This subsection continues to give District Organizations the discretion to contract for services as necessary.

EDA also received public comment on sections describing District termination, specifically subsections 304.3(b) and (c). EDA received approximately 520 identical or nearly identical comments on § 304.3(b). These comments expressed concern ''that the agency has added new criteria for the termination of District Organizations that are subjective and lack any appeals process.'' We received approximately 87 identical or nearly identical comments on § 304.3(c), which expressed concern ''that the agency may use the [Federal Funding Opportunity] process to change its policies, guidelines and performance standards without public comment.''

Section 304.3(b)(2) provides that EDA may terminate a Region's designation as an Economic Development District when EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth in the CEDS. In accordance with the Conference Report accompanying the 2006 Appropriations Act, the December 15, 2005 Rulemaking added a new subsection (c) to § 304.3 to clarify that prior to terminating a District's designation under subsection 304.3(b)(2), EDA will consult with the District Organization and consider all facts and circumstances surrounding the District Organization's operations. Section 304.3(c) also provides that EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (*e.g.*, natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

This final rule does not amend § 304.3(d). We believe that the December 15, 2005 Rulemaking changes to § 304.3 safeguard District Organizations adequately with respect to District termination. EDA cannot use the Federal Funding Opportunity announcement process to change the regulatory standards for termination or modification of the designation of Economic Development Districts.

Information with respect to the performance evaluations of District Organizations, formerly codified in part 318 of EDA's former regulations, is now incorporated into § 304.4. Pursuant to PWEDA, EDA will evaluate each District Organization within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District Organization continues to receive Investment Assistance. On § 304.4(a), we received approximately 415 identical comments stating that ''most of the requirements for grantee performance measurements are very vague and open to varying agency interpretations among the different regional offices.'' We do not believe that the provisions of § 304.4(a) are vague. In fact, unlike EDA's former regulations, the performance evaluation provisions of § 304.4(a) contain specific requirements for Economic Development Districts, such as the continuation of Regional eligibility of the District, the management of the District Organization, and the implementation of its CEDS. EDA's regional offices are directed to interpret and apply EDA's regulations consistently and uniformly across all regions in the United States. For these reasons, this final rule does not amend § 304.4(a).

Last, EDA received four comments expressing ''concern with the elimination of up to 10% additional assistance if a project is located within a designated Economic Development District.'' Because former section 403 of PWEDA was eliminated by the 2004 Act, EDA removed from its regulations the ten (10) percent EDA ''bonus'' funding for certain Projects located in Economic Development Districts. Because EDA must implement its statutory mandate of PWEDA, EDA is unable to reinstate the ten (10) percent bonus.

Part 305—Public Works and Economic Development Investments

Part 305 describes general information about the scope of EDA's Public Works program, award and application requirements, and provisions for EDA's and Recipients' duties. EDA received no public comments on this part. Section 305.1 provides information on the purpose and scope of Public Works and Economic Development Investments. The criteria section (§ 305.2) specifies the scope of activities eligible for consideration of a Public Works Investment in subsection (a), and sets forth a list of determinations in subsection (b) that EDA must reach in order to award a Public Works Investment.

The application requirements for Public Works Investments are set forth in § 305.3. The section on Public Works Projects for design and engineering work was moved from subpart B and placed as § 305.4 under subpart A. This section includes a provision to ensure awareness that EDA's funding of a Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

The first section under subpart B is § 305.5, titled *Project administration by District Organization.* These provisions are included in this subpart because the provisions are applicable to construction projects only. Section 305.6 combines two former sections titled *Construction Management services* and *Design/Build method of construction* (§§ 305.10 and 305.11 of EDA's former regulations) and addresses and accounts for the majority of Public Works Investments that lend themselves to the traditional design/build method of construction. However, Recipients may employ other construction methods, too. This final rule amends the second sentence of § 305.6(a) by replacing the phrase ''design-build'' with ''design/bid/build.''

Similar to the provisions in § 305.6, § 305.7 includes information that the Recipient must submit to EDA to justify the use of ''in-house forces.'' Section 305.8 provides that Recipients of EDA construction awards must obtain prior approval for the use of furnished equipment and materials. Requests must show that costs claimed for furnished equipment and materials are competitive with local market costs for similar equipment and materials. Section 305.9 contains specific information that the Recipient must provide to EDA for approval of any Project that necessitates phasing, including a description of elements to be completed in each phase and

detailed construction cost estimates for each phase. The last five (5) sections in subpart B, §§ 305.10 (*Bid underrun*), 305.11 (*Contract awards; early construction start*), 305.12 (*Project sign*), 305.13 (*Contract change orders*) and 305.14 (*Occupancy prior to completion*), contain the same substance as found in EDA's former regulations. However, EDA rewrote these sections in the Interim Final Rule to eliminate ambiguity or extraneous provisions.

Except for the revision made in § 305.6(a) stated above, this final rule does not amend part 305 of the Interim Final Rule.

Part 306—Training, Research and Technical Assistance Investments

Part 306 was primarily reorganized, shortened and rewritten in the Interim Final Rule for increased understanding and inclusiveness of all pertinent information. Section 306.1(a), dealing with the scope of Local and National Technical Assistance Investments, captures diverse purposes for such Investments. Section 306.2, titled *Award requirements*, is the combination of §§ 307.2 and 307.10 of EDA's former regulations. Similarly, the content of §§ 307.3 and 307.11 in EDA's former regulations was merged into § 306.3 and re-titled *Application requirements.* Section 306.3(c) specifically cross-references § 301.4(b)(4), which sets forth the governing provisions for determining applicable Investment Rates for Projects under part 306. A cross-reference to § 301.4(b) is made in applicable sections of all parts relating to specific EDA programs (i.e., parts 303–307).

EDA received approximately seven comments on § 306.3(c) which stated that the provision is ''much too demanding in terms of local match required.'' Section 301.4(b)(4) ties the maximum allowable Investment Rate for Local and National Technical Assistance Projects to that otherwise applicable to the Region in which the Project will be located. Section 301.4(b)(4) also authorizes a maximum Investment Rate of up to a one hundred (100) percent for Projects of a national scope under 13 CFR part 306 and for all other projects under 13 CFR part 306, in appropriate circumstances. We believe the maximum allowable Investment Rates for Local and National Technical Assistance Investments are fair and will preserve the Local Share requirement to make certain Recipients commit their own funds to help ensure the success of the Projects.

In the Interim Final Rule, the title of subpart B was changed from *University Center Program* to *University Center Economic Development Program.* To mirror the organization and sequence of §§ 306.2 and 306.3 in subpart A, §§ 306.5 and 306.6 are named *Award requirements* and *Application requirements*, respectively. Section 306.5 states that EDA provides Investment Assistance to University Center Projects based on the selection criteria in part 301, the competitive selection process outlined in the applicable FFO, and the extent to which the Eligible Applicant demonstrates other more specific, related criteria.

Section 306.6 sets forth application requirements for University Center Projects. Section 306.6(c) cross-references § 301.4(b)(4) for information regarding the applicable Investment Rate for University Center Projects. EDA received approximately fourteen comments on § 306.6(c), each that stated ''we are very troubled by the proposal to change the match requirements on the EDA [U]niversity [C]enter grant[s] and strongly oppose such a move.'' Section 206 of PWEDA (42 U.S.C. 3146) requires EDA to consider the ''relative needs'' of eligible areas. As noted above, we believe § 301.4(b) appropriately takes ''relative needs'' into account for purposes of determining the maximum allowable Investment Rates and the Local Share requirements for EDA Investments. Accordingly, this final rule does not amend § 306.6(c).

The University Center Economic Development Program establishes a three-year competitive cycle in which performance evaluations occurring within three (3) years after the initial Investment award will determine if a University Center may qualify to compete again for Investment Assistance. Consistent with section 506(d)(2) of PWEDA (42 U.S.C. 3196), § 306.7 contains an additional performance evaluation standard by which University Centers will be evaluated. At a minimum, University Centers will be evaluated specifically with regard to their contributions to providing technical assistance, conducting applied research, meeting program performance objectives and disseminating Project results in accordance with the scope of work funded during the evaluation period.

This final rule adopts part 306 of the Interim Final Rule in its entirety.

Part 307—Economic Adjustment Assistance Investments

EDA extensively considered and examined part 308 of EDA's former regulations in order to draft part 307 of the Interim Final Rule. This part was greatly improved by making effective use of defined terms in subpart A (covering Economic Adjustment Assistance Investments) and in subpart B (covering special requirements for RLF Grants). EDA did not receive any public comments on subpart A of part 307, covering §§ 307.1 through 307.6. This final rule amends §§ 307.1, 307.2 and 307.4 as described below.

To ensure conformity between the titles of §§ 307.1 and 307.2 and their respective contents, this final rule changes the title of § 307.1 to *Purpose* and the title of § 307.2 to *Criteria for Economic Adjustment Assistance Investments.* For improved clarity, we also move § 307.1(b) to § 307.2 and delete § 307.2(b) in its entirety because an identical statement is already in § 307.4(d). This final rule revises § 307.4(d) to read as ''Funding priority considerations for Economic Adjustment Assistance may be set forth in an FFO.''

In drafting the Interim Final Rule, EDA revised subpart A to follow PWEDA and read more concisely. For example, in § 307.3 (titled *Use of Economic Adjustment Assistance Investments*), EDA introduced the new defined terms ''*Strategy Grant*,'' referring to Economic Adjustment Assistance Investments that help develop CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation, and ''*Implementation Grant*,'' defined as an Economic Adjustment Assistance Investment used to fund a Project implementing a CEDS. Section 308.4 in EDA's former regulations, titled *Selection and evaluation factors*, was renamed *Award requirements* in § 307.4, parallel with similar provisions in other program parts, and reorganized and sub-titled for clarity.

EDA redrafted in the Interim Final Rule § 307.6 to emphasize and cross-reference relevant parts or subparts in the chapter with respect to Strategy Grants and Implementation Grants. For instance, Implementation Grants involving construction must meet the requirements for Public Works Investments, whereas Implementation Grants not involving construction must follow the requirements for Local and National Technical Assistance Investments. Accordingly, the Interim Final Rule references parts 303, 305 and 306 in § 307.6 for additional requirements that Strategy Grants and Implementation Grants, as appropriate, must fulfill (in addition to the post-approval stipulations set forth in § 302.18).

Except for an amendment made to § 307.9 as explained below, this final rule does not substantively amend subpart B of part 307. However, we have

re-ordered some of the sections in subpart B to logically separate pre-approval actions from post-approval actions. The following discussion summarizes the provisions of this subpart. The first section, § 307.7, states that subpart B sets forth the requirements applicable to Economic Adjustment Assistance Grants used to capitalize or recapitalize RLFs. To ensure accuracy and completeness in this subpart, EDA rewrote in the Interim Final Rule the defined terms in § 307.8, which relate to RLF Grants. EDA also introduced new defined terms, such as ''*Exempt Security*,'' ''*Sale*,'' ''*SEC*,'' ''*Security*'' and ''*RLF Third Party*,'' in large part to interpret the provisions of section 209(d)(2) and (4) of PWEDA (42 U.S.C. 3149).

The requirements for RLF Plans are set forth in § 307.9, which states that EDA will evaluate an RLF Plan based on its ability to ''demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures'' (*see* § 307.9(b)(3)). We received two comments opposing the provision in § 307.9 that requires the RLF Plan be submitted to and approved by EDA and passed by resolution of the RLF Recipient's governing board prior to initial disbursement of EDA funds. The commenters indicated that from a practical standpoint, it may not be possible for a State or large city to pass a resolution accepting an RLF Plan; however, a resolution requirement may be more reasonable for a non-profit organization. In response to these comments and in order to maintain necessary flexibility in EDA's grant-making processes and requirements, this final rule revises the second sentence in § 307.9 to require that the Plan be submitted to and approved by EDA. EDA will require a resolution by the RLF Recipient's governing board on a case-by-case basis.

This final rule moves § 307.16, titled *Disbursement of funds to Revolving Loan Funds,* to § 307.11 because it describes certain pre-approval requirements that must be satisfied prior to any disbursement of EDA funds (*e.g.*, evidence of fidelity bond coverage; establishment of an EDA funds account). This section was revised and reorganized in the Interim Final Rule from § 308.16 of EDA's former regulations. Section 307.12 makes explicit the general rule that RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. Section 307.12(c) provides a priority of payment schedule for proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20.

The next three sections, §§ 307.13, 307.14 and 307.15 (titled *Records and retention; Revolving Loan Fund semi-annual and annual reports;* and *Prudent management of Revolving Loan Funds*), are substantively the same as §§ 308.13, 308.14 and 308.15 of EDA's former regulations. The main focus of the revision to these sections, as seen in the Interim Final Rule, was to incorporate defined terms to improve the explanation of the specific documentation, accounting and reporting requirements. Additionally, the conflicts of interest provisions in § 308.15(e) in EDA's former regulations were moved to § 302.17(c) to improve organization and referencing facility.

This final rule moves § 307.17 (titled *Effective utilization of Revolving Loan Funds*) to § 307.16. This section was slightly reworded in the Interim Final Rule from what appeared in § 308.17 of EDA's former regulations. Those revisions largely incorporated the use of defined terms (*e.g.*, Closed Loan; RLF Capital). This final rule also moves § 307.18 (titled *Uses of capital*) to § 307.17. This section sets forth specific restrictions on the use of RLF Capital. Section 307.17(d) clarifies that In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

This final rule moves § 307.11, which addresses the addition of lending areas and the merger of RLFs, to § 307.18. In this section, EDA (i) correlated the substance of the section to applicable provisions in section 209 of PWEDA (42 U.S.C. 3149), (ii) eliminated information no longer applicable due to the passage of the 2004 Act, and (iii) explained and expanded important concepts in an orderly, coherent manner with the use of defined terms. In the Interim Final Rule, EDA changed the title of the section from *Lending areas and modification of lending areas* to *Addition of lending areas; merger of RLFs,* to highlight the increased flexibility that PWEDA affords to RLF Recipients for consolidating and merging RLF Grants. Section 307.18(a)(1) sets forth the preconditions that must be met in order for EDA to approve the creation of a ''*New Lending Area*.'' Similarly, § 307.18(b) sets forth the preconditions for EDA to approve a single RLF Recipient's or multiple RLF Recipients' merger of RLFs. The requirements in subparagraphs (1) and (2) are substantively the same regarding single RLF Recipients and multiple RLF Recipients. Each must meet the requirements to obtain annual report status (set forth in § 307.14) and amend and consolidate the RLF Plans to account for the merger. Prior to EDA's disbursement of additional funds to the RLF Recipient (or surviving RLF Recipient), EDA must determine a new Investment Rate for the New Lending Area.

EDA drafted §§ 307.19 and 307.20 of the Interim Final Rule as new provisions to accomplish the authorization for EDA's Assistant Secretary to ''assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation'' and ''take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans'' (*see* section 209(d)(2)(B) and (C) of PWEDA (42 U.S.C. 3149)). First, in any Sale or Securitization in which an RLF Recipient may participate, § 307.19 requires compliance with the Securities Act of 1933, the Securities Exchange Act of 1934 and any rule or regulation made public by the Securities and Exchange Commission (*see* section 209(d)(4) of PWEDA (42 U.S.C. 3149)). The RLF Recipient must use all proceeds from any Sale or Securitization to make additional RLF loans. Second, § 307.20 provides the terms that will govern any partial or full liquidation of an RLF Recipient's RLF loans. In the case of an EDA-approved termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

Section 307.21 provides the process for termination of RLFs. Subsection 307.21(b) provides a new authority that allows EDA to approve a request from an RLF Recipient to terminate an RLF Grant. The last section, § 307.22, was rephrased in the Interim Final Rule for clarity and completeness and covers the same material found at § 308.19 of EDA's former regulations.

EDA did not receive any specific comments on §§ 307.7 through 307.21 of subpart B. However, we received approximately 87 identical or nearly identical comments expressing general ''concern that RLF administrators are required to receive regular approval from EDA for a variety of activities and decisions.'' Other comments stated, ''The EDA RLF program should not have additional constraining administrative oversight requirements imposed on it so as to interfere with the core mission of the program to provide capital and credit to regions and businesses not served by traditional lenders.'' EDA

believes the new RLF provisions in subpart B are consistent with the Senate Report accompanying the 2004 Act, which calls for the Assistant Secretary to ''promulgate regulations to improve the administration of [RLFs], consolidate [RLFs] at the grantee's request and transfer RLF portfolio assets to third parties for liquidation.'' S. Rep. No. 108–382, at 6 (2004). Specifically, the strengthened audit and reporting requirements do not alter the original intent and scope of the RLF program or impose new cost burdens on RLF Recipients.

Part 308—Performance Incentives

Part 308 incorporates new sections 215 and 216 of PWEDA (42 U.S.C. 3154a; 42 U.S.C. 3154b). EDA received no comments on this part, nor does this final rule amend this part. The discussion below summarizes the part 308 provisions.

For any construction Project awarded under parts 305 or 307 that is completed under projected cost pursuant to section 211 of PWEDA (42 U.S.C. 3151), § 308.1(a) provides that EDA may in its discretion allow the Recipient to use the excess funds to either increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 for which the Project was eligible at the time of the Investment award, or further improve the Project consistent with its purpose.

Additionally, section 215 of PWEDA (42 U.S.C. 3154a) authorizes the Assistant Secretary to make performance awards in connection with grants to Recipients for Public Works or Economic Adjustment Assistance Investments. Section 308.2(a) provides that, with respect to any such Investment, the Assistant Secretary may grant a performance award to the Recipient (on a discretionary basis) in an amount not to exceed ten (10) percent of the Project's Investment award. As discussed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 308.2(b) in the December 15, 2005 Rulemaking to better adhere to section 215 of PWEDA (42 U.S.C. 3154a). Specifically, EDA replaced the requirement that project performance be ''exceptional'' with the ''meet or exceeds'' threshold in section 215(b)(2) of PWEDA (42 U.S.C. 3154a).

Section 308.2(c) provides that a Recipient may receive a performance award no later than three (3) years following the Project's closeout. Following section 215(e)–(f) of PWEDA (42 U.S.C. 3154a), § 308.2(d) provides that performance awards may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA, and for the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the performance award amount will be treated as non-Federal funds. Additionally, EDA will set forth in an applicable FFO the requirements, qualifications, guidelines and procedures for performance awards, with all performance awards being subject to the availability of funds (*see* § 308.2(e)).

With respect to planning performance awards, § 308.3 tracks the language of section 216 of PWEDA (42 U.S.C. 3154b). Section 308.3 introduces that a Recipient may be eligible to receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment. As with performance awards made to Recipients of Public Works or Economic Adjustment Assistance Investments, the Assistant Secretary will make such awards on a discretionary basis. As set forth in § 308.3(a), such awards are predicated on a finding that the Recipient actively participated in the economic development activities of the District and that the Project demonstrated exceptional fulfillment of one (1) or more components of the applicable CEDS.

Part 309—Redistributions of Investment Assistance

The provisions in part 309 of the Interim Final Rule are new and were not in EDA's former regulations. EDA received no comments on this part. Except for a minor revision made to § 309.1(a) as described below, this final rule does not amend this part. The discussion below summarizes part 309.

In accordance with new section 217 of PWEDA (42 U.S.C. 3154c), information with respect to redistributions of Investment funds for Planning, Public Works, and Training, Research and Technical Assistance Investments is presented in § 309.1. Specifically, § 309.1(a) provides that a Recipient under any program governed by parts 303, 305 and 306 may directly expend the Investment Assistance, or, with prior EDA approval, redistribute such funds in the form of a subgrant to another Eligible Recipient that qualifies for EDA Investment Assistance under the same program part as the Recipient. All subgrants must be subject to the same terms and conditions applicable to the Recipient under the original Investment award. To improve sentence structure, this final rule changes the phrase ''Except as provided by * * *.'' to ''Except as provided in * * *.'' in the first sentence of § 309.1(a). Subsection 309.1(b) stipulates that Investment Assistance received under parts 303 or 305 may not be redistributed to a for-profit entity.

Section 309.2 addresses redistributions under part 307 for Economic Adjustment Assistance Investments. This section reads similarly to § 309.1. However, a Recipient under part 307 may redistribute Investment funds to another Eligible Recipient in the form of a Grant or to a non-profit and private for-profit entity in the form of a loan (or loan guarantee) under subpart B of part 307.

Part 310—Special Impact Areas

Part 310 corresponds to new section 214 of PWEDA (42 U.S.C. 3154), which allows the Assistant Secretary to waive the CEDS requirements of section 302 of PWEDA (42 U.S.C. 3162) for a Project that will fulfill a ''pressing need'' of the Region or prominently address or alleviate Regional underemployment or unemployment. EDA did not receive any public comments on part 310. EDA does not make any changes to this part.

Section 310.1 generally tracks section 214 of PWEDA (42 U.S.C. 3154), but makes clear that any waiver of the requirements of section 302 of PWEDA (42 U.S.C. 3162) applies only to an individual Project, *not* to all Projects located within the Region.

Section 310.2(a) interprets the ''pressing need'' language of the new PWEDA provision and reflects standard EDA policy priorities, based on, among other things, assistance to Indian Tribes, rural and severely distressed Regions, and the existence of a Special Need. Similarly, subsections 310.2 (b) and (c) set forth quantitative measures of excessive unemployment and as indicators of useful employment opportunities, such as the Project's prospective job creation, commitment of financial investment by private entities, and application of innovative technology.

Part 311—[Reserved]

Part 312—[Reserved]

Part 313—[Reserved]

Part 314—Property

Part 314 sets forth the rules governing the uses of and EDA's interests in Property acquired, in whole or in part, or improved with EDA Investment Assistance. The changes made by the Interim Final Rule to the Real Property provisions in subpart B primarily reflect EDA policies regarding the increasing use of ''public-private'' partnerships to spur Regional economic development. EDA received no comments on this part.

The discussion below explains changes made to §§ 314.1, 314.4, 314.6, 314.7 and 314.10 by this final rule and summarizes changes previously made by the Interim Final Rule to specific sections of part 314.

In the Interim Final Rule, EDA revised defined terms from EDA's former regulations and added new defined terms in § 314.1 for clarity and consistency. For example, the definition of ''*Adequate Consideration*'' includes the concept of ''fair market value'' (*i.e.*, the purchase price agreed upon between a buyer and a seller acting in good faith, both having full knowledge of the material facts and circumstances surrounding the contemplated transaction). In comparison, EDA's former regulations used a ''fair and reasonable'' determination to define Adequate Consideration. This final rule removes the defined terms ''*Encumbrance*'' and ''*Encumber.*'' These terms were defined in § 314.1 as having the meaning ascribed to them in § 314.6. Inasmuch as the title of § 314.6 is *Encumbrances,* the reader will have no difficulty in finding and understanding EDA's discussion of these terms. For improved accuracy and understanding, this final rule also amends the definition of ''*Estimated Useful Life*'' to make clear that this term refers to the time span over which EDA participates and realizes the economic development benefits of its Investment in a Project.

Section 314.2(a) provides that (i) Property acquired or improved, in whole or in part, with Investment Assistance is held in trust by the Recipient for the benefit of the Project and (ii) EDA maintains an equitable reversionary interest in such Property for the Estimated Useful Life of the Project (defined as the ''*Federal Interest*''). Section 314.2(b) is the same as the provisions set forth in EDA's former regulations and provides that when the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

Section 314.3, titled *Authorized use of Property*, provides the circumstances in which Recipients may use Property acquired or improved, in whole or in part, with Investment Assistance. For example, § 314.3(d) allows EDA to approve the transfer of Property from a Recipient to a Successor Recipient (or between two Successor Recipients) and clarifies that the process necessary to effectuate a substitution of the Recipient (or Successor Recipient) involves transferring the Project Property between the parties. The provision in § 314.3(f) was introduced in the Interim Final Rule and was not present in EDA's former regulations. This provision authorizes EDA to approve, and a Recipient to undertake, an incidental use of Property that does not interfere with the scope or economic purpose of the Project. This incidental use is conditioned upon the Recipient's compliance with applicable law and the terms and conditions of the Investment Assistance.

Section 314.4(a) provides that, with certain exceptions, the Federal government must be compensated for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved (in whole in part) with Investment Assistance is Disposed of, encumbered, or no longer used for the purpose of the Project. This final rule amends § 314.4(a) by replacing the phrase ''Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24'' with the phrase ''requirements at 15 CFR parts 14 or 24, as applicable.'' Section 314.4(b) sets out additional Unauthorized Uses of Property prior to the release of EDA's interest. Section 314.4(c) generally tracks § 314.4(b) of EDA's former regulations and sets forth the remedies available to EDA to recover the Federal Share in the event of an Unauthorized Use. This final rule adds a new sentence to subsection (c) to restore the language that previously was set out in § 314.5(d) of EDA's former regulations, which specifies that payment of the Federal Share in accord with this section extinguishes the Federal Interest in the Property. Section 314.5(d) of EDA's former regulations was moved to § 314.2(b) in the Interim Final Rule, which covers Federal Interest provisions. We are adding a similar statement to § 314.4(c) concerning Unauthorized Use of Property to clarify that once the Federal Share is repaid, EDA has no continuing interest in the ownership, use or Disposition of the Property.

Section 314.5 defines ''*Federal Share*'' and is substantively the same as § 314.5(a) of EDA's former regulations. Similarly, § 314.6 is substantively the same as § 314.6 of EDA's former regulations (although the provisions are reordered to present the general rule and exceptions in a more logical sequence) and, with certain exceptions, prohibits the encumbrance of Recipient-owned Property. To improve clarity, this final rule revises the first sentence in § 314.6(a) by eliminating the phrase ''(collectively, an ''*Encumbrance*'' or to ''*Encumber*'').'' Further, this final rule adds the phrase '', except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project'' after the words ''or otherwise encumbered'' in the first sentence of § 314.6(a). This revision aims to simplify program administration by allowing such encumbrances to remain on EDA-assisted Properties without requiring the administrative step of requesting and obtaining specific EDA approval. As a matter of policy, EDA automatically approves such requests and, therefore, the extra step is unnecessary. Section 314.6(b)(1) sets out a similar provision that authorized EDA to approve an encumbrance on Project Property when the Recipient has encumbered the Property at the behest of another Federal Agency. This final rule removes § 314.6(b)(1) in its entirety and re-numbers paragraphs (b)(2), (b)(3) and (b)(4) as paragraphs (b)(1), (b)(2) and (b)(3), respectively.

Section 314.7(a) sets forth the requirement that a Recipient must hold title to the Real Property required for a Project at the time Investment Assistance is awarded and must maintain title at all times during the Estimated Useful Life of the Project (the ''*General Rule*''). Section 314.7(c) sets forth the exceptions to the General Rule. For example, § 314.7(c)(1) addresses the situation where Investment Assistance will be used to purchase Real Property required for a Project. Under § 314.7(c)(1), EDA may determine that the Recipient satisfies the title ownership requirement of § 314.7(a) if the Recipient has entered into a Real Property purchase agreement and provides reasonable assurances that it will obtain fee title for the Real Property needed for a Project prior to or concurrent with the initial disbursement of Investment Assistance.

Subsections 314.7(c)(5) and (6) address situations where the EDA-approved purpose of the Project is to construct facilities benefiting Real Property owned by the Recipient (§ 314.7(c)(5)) or privately-owned Real Property (§ 314.7(c)(6)), where the benefited Real Property will ultimately be sold or leased to private parties. These provisions replace § 314.7(c)(3) and (4) in EDA's former regulations and generally apply to all types of Real Property, including but not limited to industrial and commercial parks. For improved sentence structure and accuracy, this final rule reformats subsections (c)(5)(i)(D) and (c)(6)(i)(D) of § 314.7 to clarify that the sale or lease of any portion of a Project during its Estimated Useful Life must be for

Adequate Consideration, and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after the sale or lease. EDA may waive these requirements under the specific circumstance provided in both subsections, namely, after the ten (10) year anniversary of the date upon which the Investment Assistance was awarded. This final rule also removes the references in §§ 314.7(c)(5)(i)(E) and 314.7(c)(6)(i)(E) to the number of times a Project is transferred, because EDA believes that the five (5) year anniversary periods (similar to the ten (10) year anniversary period noted above) are more accurate measures of whether a Project is continuing to serve the purpose(s) for which the underlying EDA Investment was made.

Section 314.8 is substantively the same as § 314.8 of EDA's former regulations and generally provides that for all Projects involving the acquisition, construction or improvement of a building, the Recipient must execute a lien, covenant or other statement of EDA's interest in such Real Property. Any lien, covenant or statement of EDA's interest must be perfected and recorded (in accordance with local law) in the jurisdiction in which the Real Property is located. Section 314.9 is substantively the same as § 314.9 of EDA's former regulations and provides that for all Projects involving the acquisition or improvement of significant items of Personal Property, the Recipient must execute a security interest or other statement of EDA's interest in such Personal Property. Any security interest or statement must be perfected and recorded in accordance with applicable law and with continuances re-filed, as appropriate.

Subsections 314.10(a) through (c) are substantively the same as subsections 314.11(a) through (c) of EDA's former regulations. This final rule eliminates the phrase '', in whole or in part,'' from § 314.10(a). In addition, in § 314.10(c)(1), we replace the phrase ''paragraph (a)'' with ''paragraphs (a) or (b),'' for conformance with § 314.11(c)(1) of EDA's former regulations.

The Interim Final Rule added a new section to EDA's regulations at § 314.10(d). This section sets forth the procedures for requesting a release of EDA's Real Property or tangible Personal Property interest pursuant to section 601(d)(2) of PWEDA (42 U.S.C. 3211) and § 314.10. This final rule revises the second sentence of § 314.10(d)(1) to read as follows: ''In addition to the restrictions set forth in paragraph (c) of this section, the release may be conditioned upon some activity of the Recipient intended to be pursued as a consequence of the release.'' EDA makes these revisions to ensure clarity and to ensure consistency among different provisions of § 314.10.

Part 315—Trade Adjustment Assistance for Firms

The Interim Final Rule substantially revised the Trade Adjustment Assistance for Firms (''*TAA*'') program provisions of EDA's former regulations. In the Interim Final Rule, part 315 was reorganized and simplified primarily by expanding the use of defined terms and by adding a new subpart D on Adjustment Proposals. This final rule adopts part 315 without substantive change except for amendments made to §§ 315.5, 315.6, 315.7, 315.8 and 315.16.

Among the new definitions in § 315.2, the defined terms ''*Increase in Imports*'' and ''*Contributed Importantly*'' describe two (2) of the most important concepts of the TAA program. In order for EDA to determine that a petitioning Firm demonstrates injury, the petitioning Firm must show that An Increase in Imports Contributed Importantly to its (i) decline in sales or production and (ii) loss of employment. EDA received two (2) comments suggesting that the defined term ''Increase in Imports'' is an ''outdated condition required to qualify domestic manufacturers for needed TAA.'' The commenters stated that ''when significant market-share has been captured by imports, there may not be an increase in imports because of general economic conditions whereby the demand for a particular product may decline.'' This final rule does not amend the definition of ''Increase in Imports'' because the definition tracks section 251(c) of the Trade Act (19 U.S.C. 2341) precisely and is intended to provide for more consistent application in injury determinations.

The new term ''*Decreased Absolutely*'' imposes a five (5) percent minimum injury threshold requirement in the measurement of a Firm's decline in sales or production. EDA received approximately seven comments on this defined term which stated that the five (5) percent minimum injury threshold requirement will deny access to further qualified Firms, making it more difficult for them to qualify for the TAA program. This final rule does not amend the definition of ''Decreased Absolutely.'' EDA has imposed this new threshold to (i) eliminate certification of Firms whose decline in sales or production is *de minimis* and, therefore, less certain to be attributable to an Increase in Imports, and (ii) help ensure that limited TAA program funds are provided to the most merit-worthy Firms facing difficult adjustment problems as a result of an Increase in Imports. Similarly, the definitions of ''*Predecessor*'' and ''*Successor*'' Firms set forth in the Interim Final Rule provide guidance for the circumstance where a petitioning Firm relies on the economic injury suffered by a corporate predecessor. These defined terms make clear that the Successor must have been in business less than two (2) years and must have purchased substantially all of the assets of the Predecessor.

Section 315.5 consolidates into one section the scope of operations, selection, evaluation and award requirements of the Trade Adjustment Assistance Centers (''*TAACs*''), the non-profit and university-affiliated organizations that administer the TAA program nationwide through Cooperative Agreements with EDA. For consistency throughout the chapter, we amend the last sentence in § 315.5(a)(1) by replacing the phrase ''annual FFO'' with ''applicable FFO.'' For improved understanding and formatting, this final rule also deletes the lead-in phrase in § 315.5(b) and replaces the semicolon in § 315.5(b)(1) with a period. Additionally, we revise § 315.5(b)(2) by making clear that EDA may invite new TAAC proposals through an FFO.

Section 315.6 consolidates into one section the eligibility, evaluation and award requirements for Firms seeking Adjustment Assistance under the TAA program. This final rule amends the title of § 315.6 to read as *Firm eligibility for Adjustment Assistance*, to more accurately reflect the section's contents, and removes the subtitles in paragraphs (a) through (c). Further, for clarity and conciseness, we replace the first sentence in § 315.6(a)(3) with the sentence in § 315.6(a)(4), and marginally revise the second sentence in § 315.6(a)(3).

Section 315.7 outlines the requirements for injury determinations based on a twelve-month (12) decline (§ 315.7(b)(1)), an interim sales or production decline (§ 315.7(b)(2)), or an interim employment decline (§ 315.7(b)(3)). This section makes clear that in order to be certified under any of these circumstances, a Firm must meet all of the requirements of the applicable subsection. We received approximately eight comments on § 315.7(b), three of which expressed opposition to the applicable twelve-month (12) and six-month (6) periods of comparison outlined in §§ 315.7(b)(1) and 315.7(b)(3), and five of which expressed that the ''change to require six-month interim periods from the currently quarterly interim periods [in § 315.7(b)(2)] will limit the number of

potentially eligible [F]irms to enter the program.'' EDA increased the injury periods for an interim sales or production decline and an interim employment decline to help ensure that limited TAA program funds are provided to the most merit-worthy Firms facing difficult adjustment problems as a result of an Increase in Imports into the United States. Section 315.7 as set forth in the Interim Final Rule adds consistency and integrity to these injury determination requirements by ensuring that (i) injury has occurred recently and (ii) injury is not due to seasonal fluctuations in sales, production or employment. This final rule amends the second sentence in § 315.7(a) by deleting the phrase ''all of'' and replacing the word ''requirements'' with ''circumstances.''

Section 315.8, titled *Processing petitions for certification*, generally tracks § 315.10 of EDA's former regulations. This final rule amends this section to include a reference to Form ED–840P, which a petitioning Firm must complete and submit to EDA in order to apply for Adjustment Assistance. This final rule also replaces the lead-in sentence of § 315.8(b) to include the new title of the form. Additionally, in response to comments received on this regulation, § 315.8(b)(5) is revised to add the requirement that a petitioning Firm also must submit to EDA one (1) copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one (1) copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition. Public companies should submit copies of their most recent Form 10–K annual reports (or Form 10–Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition. This final rule also eliminates § 315.8(b)(6) and re-designates subsections (b)(7) and (b)(8) as (b)(6) and (b)(7), respectively. As requested, EDA is eliminating the requirement that Firms submit Federal income tax returns and State employment tax returns in order to reduce respondent burden in completing and submitting petitions (on Form ED–840P).

Although the substantive provisions in § 315.8 were not modified in the Interim Final Rule, one commenter raised a concern on the process prescribed in paragraphs (c) (relating to formal EDA acceptance of a petition for certification) and (g) (relating to the time of the determination after acceptance of a petition). The commenter contended that these paragraphs do not comport with the underlying statutory provision that requires EDA to make a determination about certification not later than 60 days after the date the petition is ''filed'' (*see* 19 U.S.C. § 2341(d)). EDA believes the requirements of paragraphs (c) and (g) of this section (discussed below) are fully consistent with the statute. Moreover, these provisions have been in the EDA regulations without substantive change since 1995 (although the Interim Final Rule provides that EDA will send notice of a technically deficient petition to the sponsoring TAAC instead of to the petitioning firm). This final rule does not change either paragraph (c) or (g) of § 315.8 from the version published in the Interim Final Rule.

In evaluating petitions for determinations of certification under paragraphs (c) and (g) of § 315.8 of the Interim Final Rule, EDA employs a two-stage process. First, EDA conducts a technical review based on the requirements set forth in paragraph (b) of § 315.8 to determine if a petition has been properly filed and can be accepted for investigation. Second, EDA examines the ''accepted'' petition to determine whether the firm is eligible for program benefits based on the claims set forth in the petition. EDA works closely with the TAACs upon receipt of a petition and during the early stages of the petition evaluation process to ensure that eligible firms are not denied access to the TAA program due to technical defects in their petitions. The submission of accurate petitions also decreases the time it takes EDA to certify firm eligibility. EDA intends to work more closely with the TAACs to ensure that petitions submitted by firms through the TAACs meet technical petition filing requirements. For its part, EDA will endeavor to process accepted petitions in an expeditious manner and well in advance of the 60-day review period required by the statute and by paragraph (g) of § 315.8 of the Interim Final Rule.

The commenter also recommended that EDA drop the new regulations and look for ways to streamline the certification process. For the reasons noted above, EDA believes it has streamlined significant aspects of the certification process in response to comments. Moreover, in addition to these new regulations, EDA has placed into service a new petition for certification that streamlines the petition process. This final rule includes those provisions necessary to enable EDA to demonstrate it is administering the Trade Adjustment Assistance Program in a manner consistent with the requirements of law.

Section 315.9, titled *Hearings,* and § 315.11, titled *Appeals, final determinations and termination of certification,* divide § 315.11 of EDA's former regulations to address separately these distinct topics. As set forth in the Interim Final Rule, subpart C, titled *Protective Provisions,* contains standard provisions consistent with the Trade Act and EDA policy on recordkeeping (§ 315.12), audit and examination (§ 315.13), certifications (§ 315.14) and conflicts of interest (§ 315.15).

Subpart D, titled *Adjustment Proposals,* presents provisions reflecting long-standing practices of EDA and the TAACs in evaluating Adjustment Proposals. This final rule changes the title of § 315.16 to *Adjustment Proposal Requirements* and removes the word ''process'' in the lead-in statement. To clarify the appropriate uses of TAA program funds, this final rule also adds a new subsection (d) to § 315.16 to read as follows: ''The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For this purpose, Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.''

Finally, subpart E, titled *Assistance to Industries,* is effectively unchanged from EDA's former regulations, tracking the current statutory provisions of the Trade Act.

Classification

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

Executive Order No. 12866

It has been determined that this final rule is significant for purposes of Executive Order 12866.

Congressional Review Act

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

Executive Order No. 13132

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''*PRA*'') requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this final rule. These collections of information are necessary for the proper performance and functions of EDA. Subsequent to the August 11, 2005 publication of the Interim Final Rule (as amended by the December 15, 2005 Rulemaking), EDA undertook an extensive review of its collections of information, and thereby changed the title of four (4) of its collections of information and consolidated three (3) collections of information into existing information collections.

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
301.2; 301.10	With an application for Investment Assistance, a non-profit Eligible Applicant must include a resolution passed by an authorized representative of a political subdivision of a State.	ED–900A, Application for Investment Assistance (0610–0094).
301.3(a); 301.10; 305.3(a)(1)	An Eligible Applicant must substantiate Regional eligibility and justify the requested EDA Investment Assistance based on, for example, the unemployment rate, per capita income levels, or a Special Need (as determined by EDA) in the Region in which the Project will be located. The Eligible Applicant also must identify and submit to EDA the source of data used to substantiate Regional eligibility (*e.g.*, ACS data, other Federal data for the Region in which the Project will be located, or data available through the State government).	ED–900P, Pre-Application for Investment Assistance (0610–0094).
301.4(b)(1)(i); 305.3(a)(1)	An Eligible Applicant must provide information on the severity of the Region's unemployment and its duration, the per capita income levels and extent of the Region's unemployment or outmigration.	ED–900P, Pre-Application for Investment Assistance (0610–0094).
301.4(b)(4)	An Eligible Applicant for a Project under part 306 must provide information to show that the Project merits an increase to the Investment Rate because of the Project's infeasibility without such an increase, or because the Project will be of no or only incidental benefit to the Eligible Applicant.	ED–900P, Pre-Application for Investment Assistance (0610–0094).
301.5; 301.10	An Eligible Applicant must provide information to show that Matching Share funds will be available for the Project.	ED–900A, Application for Investment Assistance (0610–0094).
301.7	An Eligible Applicant must submit an Investment proposal on EDA's pre-application (on Form ED–900P or any successor form).	ED–900P, Pre-Application for Investment Assistance (0610–0094).
301.7(a)(1); 301.10(a) and (b).	For Projects selected from successful pre-applications, EDA will invite those Eligible Applicants to submit formal applications for Investment Assistance (on Form ED–900A or any successor form).	ED–900A, Application for Investment Assistance (0610–0094).
301.10(b)(3)	An Eligible Applicant for a construction Project under parts 305 or 307 must include with its application for Investment Assistance a CEDS acceptable to EDA (pursuant to part 303) or otherwise incorporate by reference a current CEDS that EDA approves for the proposed Project.	ED–900A, Application for Investment Assistance (0610–0094).
302.7(a)	Recipients must submit requests for amendments to Investment awards in writing to EDA for approval and provide information and documentation as EDA deems necessary.	Award Amendment Request (0610–0102).
302.9(a)	An Eligible Applicant must furnish comments on the Project from the relevant governmental authority in the Region or proof of efforts to obtain comments if none were provided by the governmental authority.	ED–900A, Application for Investment Assistance (0610–0094).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
302.10(b)(1)	An Eligible Applicant must certify to EDA the names of any persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting Investment Assistance applications made to EDA.	ED–900A, Application for Investment Assistance (0610–0094).
302.14(a)	Recipients shall keep records of the amount and disposition of awards of Investment Assistance, the total cost of the Project, the amount and nature of the portion of the Project costs provided by other sources and other records that would facilitate an effective audit.	Audits of States, Local Governments, and Non-Profit Organizations, OMB Circular A–133.
302.15	An Eligible Applicant must certify (and submit evidence thereof satisfactory to EDA) that it meets the requirements for receiving Investment Assistance.	ED–900P, Pre-Application for Investment Assistance (0610–0094).
302.16(b)	Recipients are required to submit reports consisting of data-specific evaluations of the Project's effectiveness.	Government Performance and Results Act (''GPRA'') Performance Validation Forms (0610–0098).
302.16(c)	EDA may require a Recipient to provide a ''Project service map'' and other information in order to determine which segments of the Region are being assisted with the Investment Assistance.	Project Service Map (0610–0102).
302.20(d)	Recipients and Other Parties must submit written assurances to EDA that they will comply with anti-discriminatory laws and regulations.	ED–900A, Application for Investment Assistance (0610–0094).
303.9(c)	Eligible Applicants for short-term Planning Investment Assistance must provide performance measures acceptable to EDA, and provide EDA with progress reports during the term of the Planning Investment.	GPRA Performance Validation Forms (0610–0098).
304.1; 304.4(a)	To have a Region certified as an EDD, a District Organization must submit information showing that the Region contains at least one area subject to the relevant economic distress criteria, is able to foster development on a larger scale than in a single area, has an EDA-approved CEDS and obtains commitments from a majority of the relevant counties and States.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
304.2(c)(2); 304.4(b)	The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region.	ED–900A, Application for Investment Assistance (0610–0094); Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
304.2(c)(4)	The District Organization must notify the public of its annual meetings, its decisions, the results of programs, and as reasonably requested, the results of audited statements, annual budgets, and minutes of public meetings.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
305.2(b); 305.3(a)(3)	An Eligible Applicant must show that the Public Works Project will promote: the growth of industrial or commercial plants, the creation of long-term employment opportunities primarily for low-income families, and the fulfillment of the Region's pressing needs.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.4(c)	In order to receive any portion of the Investment Assistance for design and engineering work, an Eligible Applicant must submit and certify information that documents compliance with the Investment awards of all design and engineering contracts.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.5	In order to allow a District Organization to administer the Project for another Recipient, the Recipient must make this request and submit information to EDA showing that the Recipient does not have the current staff capacity to administer the project, the District Organization would be more effective than another local business or organization, the District Organization would not subcontract the work, and the costs of District Organization administration will not exceed the allowable costs were the Recipient administering it.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.6	A Recipient may use an alternate construction procurement method to the traditional design/bid/build. If an alternate method is used, the Recipient must submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
305.7	The Recipient may use ''in-house forces'' for design, construction, inspection, legal services or other work on the Project if it submits a sufficient justification to EDA.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.8(a); 305.8(b)	Recipients of EDA construction awards must obtain prior approval for the use of furnished equipment and materials. Requests must show that costs claimed for furnished equipment and materials are competitive with local market costs for similar equipment and materials.	ED–900A. Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.9	An EDA construction award Recipient must submit information to EDA regarding why phasing is necessary, a description of the phasing, related costs and schedules, and certification that the Recipient will pay for overruns and that it is capable of paying for incurred costs before the first disbursement.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.10	If at the construction contract bid opening, the lowest responsive bid is less than total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.	Construction Investments (0610–0096).
305.11	Recipients may issue a notice permitting construction under contract to commence prior to an EDA determination of award compliance and eligibility for cost reimbursement, but will proceed at their own risk until EDA review and concurrence. The EDA regional office may request information from the Recipient to make a determination of award compliance.	Construction Investments (0610–0096).
305.12	EDA requires a Recipient to erect a project sign or signs at the Project construction site to indicate that the Federal government is participating in the Project. The regional office will provide mandatory specifications for Project signage.	Construction Investments (0610–0096).
305.13	Recipients involved in a contract change order must submit them to EDA for review.	Construction Investments (0610–0096).
306.2	EDA selects Projects for Local and National Technical Assistance based on the criteria in part 301 and the extent to which the Eligible Applicant demonstrates that the Project will achieve more specific objectives in the Region (as set forth in § 306.2) and meets the criteria in the applicable FFO.	ED–900P, Pre-Application for Investment Assistance (0610–0094).
306.5	EDA provides Investment Assistance to University Center Projects based on the selection criteria in part 301, the competitive selection process outlined in the applicable FFO, and the extent to which the Eligible Applicant demonstrates other more specific, related criteria.	ED–900P, Pre-Application for Investment Assistance (0610–0094).
307.5(a)	Each application for Economic Adjustment Assistance must include or incorporate by reference (if so approved by EDA) a CEDS.	ED–900A, Application for Investment Assistance (0610–0094).
307.9	All RLF Recipients must submit to EDA an RLF Plan ...	RLF Standard Terms and Conditions (0610–0095).
307.11(a)	Prior to the disbursement of EDA funds, RLF Recipients must provide in a form acceptable to EDA evidence of fidelity bond coverage and evidence of certification in accordance with § 307.15(b)(1).	RLF Standard Terms and Conditions (0610–0095).
307.11(e)	If the Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA.	RLF Standard Terms and Conditions (0610–0095).
307.12(a)(4)	RLF Recipients must complete an RLF Income and Expense Statement.	ED–209I, Income and Expense Statement (0610–0095).
307.13(a)	RLF Recipients must maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of such Closed Loan.	RLF Standard Terms and Conditions (0610–0095).
307.13(b)	RLF Recipients must maintain adequate accounting records to substantiate the amount of RLF Income expended for eligible administrative costs and retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF.	RLF Standard Terms and Conditions (0610–0095).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
307.14(a)	All RLF Recipients must submit semi-annual reports to EDA.	ED–209S, Semi-Annual Report (0610–0095).
307.14(a)	EDA may approve the substitution of annual reports for semi-annual reports upon written request by the RLF Recipient if the conditions set forth in § 307.14(a)(1)–(4) are met.	ED–209A, Annual Report (0610–0095).
307.14(b)	All Recipients must certify as part of the semi-annual or annual report that the RLF is operating in accordance with the RLF Plan, and describe any modifications to the RLF Plan to ensure effective use of the RLF.	ED–209S, Semi-Annual Report (0610–0095). ED–209A, Annual Report (0610–0095).
307.14(c)	An RLF Recipient using either fifty percent or more (or more than $100,000) of RLF Income for administrative costs in a 12-month reporting period must submit a completed Income and Expense Statement annually to the appropriate EDA regional office.	ED–209I, Income and Expense Statement (0610–0095).
307.15(b)(1)	Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the Recipient's accounting system shall certify to EDA and the Recipient that such system is adequate to identify, safeguard and account for all RLF operations.	RLF Standard Terms and Conditions (0610–0095).
307.15(b)(2)	Prior to the disbursement of any EDA funds, an RLF Recipient must certify that standard loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law.	RLF Standard Terms and Conditions (0610–0095).
307.16(b)	Recipients must promptly notify EDA in writing of any condition that may adversely affect their ability to meet prescribed schedule deadlines. Recipients must submit a written request for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds.	RLF Standard Terms and Conditions (0610–0095).
307.17(e)	After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the Recipient has obtained prior written approval from EDA of its proposed loan activities and submitted to EDA the three listed items. The Recipient must also amend its RLF Plan to accommodate any EDA-approved loan guaranty activities.	RLF Standard Terms and Conditions (0610–0095)
307.19	With prior approval from EDA, a Recipient may enter into a Sale or Securitization of all or a portion of its RLF loan portfolio.	RLF Standard Terms and Conditions (0610–0095).
307.21(b)	EDA may approve a request from a Recipient to terminate an RLF Grant.	RLF Standard Terms and Conditions (0610–0095).
part 310	Upon the application of an Eligible Applicant, EDA may designate the Region which the Project will serve as a Special Impact Area and waive the CEDS requirement if the Eligible Applicant demonstrates that its proposed Project will directly fulfill a pressing need and assist in preventing excessive unemployment.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
314.3(f)	With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided it satisfies the conditions set forth in § 314.3(f).	Property Management 0610–0103.
314.6(b)	In order to use EDA-funded property to secure a mortgage or deed of trust or encumber the property, the Recipient must provide information that satisfies one or more of the exceptions set forth in § 314.6(b).	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.7(a) and (c)	The Recipient must provide information that satisfies EDA that the Recipient has title to the Real Property and all easements, rights-of-way, permits or long-term leases, unless it can provide information proving it meets an exception to the rule.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.7(b)	The Recipient must provide information regarding all encumbrances on the Real Property to EDA.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
314.8	Recipients must execute a lien, covenant or other statement of EDA's interest in all Property acquired or improved with EDA Investment Assistance and record it in the proper jurisdiction.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.9	Recipients must execute a security interest or other statement of EDA's interest in Personal Property acquired or improved by EDA funds and record the interest in accordance with applicable law.	ED–900A, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.10	If a Recipient wishes for EDA to release its Real Property or tangible Personal Property interest before the expiration of the Property's Estimated Useful Life, it must submit a request to EDA and either file a covenant of use precluding inherently religious activities or purchase EDA's Federal Share in such Property.	0610–0103.
315.5(b)	Current or prospective TAACs must submit either a new or amended application to EDA, along with a proposed budget, narrative scope of work and other information as may be requested by EDA.	ED–900A, Application for Investment Assistance (0610–0094).
315.5(c)	TAACs must submit information regarding performance to be evaluated by EDA.	GPRA Performance Validation Form (0610–0098).
315.6(a)(1); 315.7; 315.8	Firms must provide specific information to EDA in order to be certified for participation in the TAA program.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.6(a)(2); 315.6(a)(3); 315.16.	A Certified Firm must submit an Adjustment Proposal to EDA for approval. If EDA approves the Adjustment Proposal, the Firm may then request Adjustment Assistance from the TAAC.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.9	In order to have a public hearing, a Person with a Substantial Interest in an accepted petition for TAA certification must submit a request that follows this section's procedures.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.12	Each TAAC shall keep records disclosing the use of all TAA funds.	GPRA Performance Validation Form (0610–0098).

List of Subjects

13 CFR Part 300

Financial assistance, Distressed region, Headquarters, Regional offices.

13 CFR Part 301

Eligibility requirements, Applicant requirements, Economic distress levels, Investment rates, Match share requirements, Application requirements, Proposal selection.

13 CFR Part 302

Environmental review, Federal policy and procedures, Inter-governmental review, Fees, Pre-approval requirements, Project administration, Reporting and audit requirements, Conflicts of interest, Post-approval requirements, Civil rights.

13 CFR Part 303

Planning, Award and application requirements, Comprehensive economic development strategy, State plans, Short-term planning investments.

13 CFR Part 304

Economic development district, Organizational requirements, District modification and termination, Performance evaluations.

13 CFR Part 305

Public works, Economic development, Award and application requirements, Requirements for approved projects.

13 CFR Part 306

Training, Research, Technical assistance, Award and application requirements, University centers, Performance evaluations.

13 CFR Part 307

Economic adjustment assistance, Award and application requirements, Revolving loan fund, Pre-loan requirements, Merger, Income, Record and reporting requirements, Sales and securitizations, Liquidation, Termination.

13 CFR Part 308

Performance awards, Planning performance awards.

13 CFR Part 309

Redistribution requirements, Investment assistance.

13 CFR Part 310

Special impact area, Excessive unemployment, Special need.

13 CFR Part 311

[Reserved]

13 CFR Part 312

[Reserved]

13 CFR Part 313

[Reserved]

13 CFR Part 314

Federal interest, Authorized use, Property, Federal share, Title, Release, Property interest.

13 CFR Part 315

Administrative practice and procedure, Trade adjustment assistance, Eligible petitioner, Firm selection, Certification requirements, Recordkeeping and audit requirements, Adjustment proposals.

Regulatory Text

■ For reasons discussed above, 13 CFR chapter III is revised to read as follows:

13 CFR CHAPTER III

Economic Development Administration, Department of Commerce

Part

300 General Information
301 Eligibility, Investment Rate and Proposal and Application Requirements
302 General Terms and Conditions for Investment Assistance

303 Planning Investments and Comprehensive Economic Development Strategies
304 Economic Development Districts
305 Public Works and Economic Development Investments
306 Training, Research and Technical Assistance Investments
307 Economic Adjustment Assistance Investments
308 Performance Incentives
309 Redistributions of Investment Assistance
310 Special Impact Areas
311 [Reserved]
312 [Reserved]
313 [Reserved]
314 Property
315 Trade Adjustment Assistance for Firms

PART 300—GENERAL INFORMATION

Sec.
300.1 Introduction and mission.
300.2 EDA Headquarters and regional offices.
300.3 Definitions.

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 300.1 Introduction and mission.

EDA was created by Congress pursuant to the Public Works and Economic Development Act of 1965 to provide financial assistance to both rural and urban distressed communities. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through Investments in infrastructure development, capacity building and business development in order to attract private capital investments and higher-skill, higher-wage jobs to Regions experiencing substantial and persistent economic distress. EDA works in partnership with distressed Regions to address problems associated with long-term economic distress as well as to assist those Regions experiencing sudden and severe economic dislocations, such as those resulting from natural disasters, conversions of military installations, changing trade patterns and the depletion of natural resources. EDA Investments generally take the form of Grants to or Cooperative Agreements with Eligible Recipients.

§ 300.2 EDA Headquarters and regional offices.

(a) EDA's Headquarters Office is located at: U.S. Department of Commerce, Economic Development Administration, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

(b) EDA has regional offices throughout the United States and each regional office's contact information may be found on EDA's Internet Web site at *http://www.eda.gov* or in the notice of Federal Funding Opportunity published annually by EDA. Please contact the appropriate regional office to learn about EDA Investment opportunities in your Region.

§ 300.3 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Assistant Secretary means the Assistant Secretary for Economic Development within the Department.

Comprehensive Economic Development Strategy or *CEDS* means a strategy that meets the requirements of § 303.7 of this chapter.

Cooperative Agreement means the financial assistance award of EDA funds to an Eligible Recipient under PWEDA, where substantial involvement is expected between EDA and the Eligible Recipient in carrying out the activities contemplated in an agreement between the parties. *See* 31 U.S.C. 6305.

Department means the U.S. Department of Commerce.

District Organization means an organization meeting the requirements of § 304.2 of this chapter.

Economic Development District or *District* or *EDD* means any Region in the United States designated by EDA as an Economic Development District under § 304.1 of this chapter (or such regulation as was previously in effect before the effective date of this section) and also includes any economic development district designated as such under section 403 of PWEDA, as in effect on February 10, 1999.

EDA means the Economic Development Administration within the Department.

Eligible Applicant means an entity qualified to be an Eligible Recipient or its authorized representative.

Eligible Recipient means any of the following:

(1) City or other political subdivision of a State, including a special purpose unit of State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions;

(2) State;

(3) Institution of higher education or a consortium of institutions of higher education;

(4) Public or private non-profit organization or association, including a community or faith-based non-profit organization, acting in cooperation with officials of a political subdivision of a State;

(5) District Organization;

(6) Indian Tribe or a consortium of Indian Tribes; or

(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments under part 306 of this chapter.

Federal Agency means a department, agency or instrumentality of the United States government.

Federal Funding Opportunity or *FFO* means the notice EDA publishes annually at *http://www.grants.gov* and on EDA's Internet Web site at *http://www.eda.gov* that describes the amounts, particular application procedures, funding priorities, special circumstances and other relevant information concerning EDA's Investment programs for the year. EDA may also periodically publish FFOs on specific programs or initiatives.

Federally-Declared Disaster means a Presidentially-Declared Disaster, a fisheries resource disaster pursuant to section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)), or other federally-declared disasters pursuant to applicable law.

Grant means the financial assistance award of EDA funds to an Eligible Recipient under PWEDA, where the Eligible Recipient bears responsibility for carrying out the activities contemplated in an agreement between the parties. *See* 31 U.S.C. 6304.

Immediate Family means a person's spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

In-Kind Contribution(s) means non-cash contributions, which may include contributions of space, equipment, services and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal cost principles and the requirements of 15 CFR parts 14 or 24, as applicable.

Indian Tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation as defined in or established under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. This term includes the governing body of an Indian tribe, non-profit Indian corporation (restricted to

Indians), Indian authority, or other non-profit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian tribe or Alaska Native Village.

Interested Party means any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party's Immediate Family and other persons directly connected to the Interested Party by law or through a business arrangement.

Investment or *Investment Assistance* means an EDA Grant or Cooperative Agreement entered into by EDA and a Recipient.

Investment Rate means, as set forth in § 301.4 of this chapter, the amount of the EDA Investment in a particular Project expressed as a percentage of the total Project costs.

Local Share or *Matching Share* means the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by Recipients or third parties as a condition of an Investment. The Matching Share may include funds from other Federal Agencies only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Presidentially-Declared Disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

Private Sector Representative means, with respect to any for-profit enterprise, any senior management official or executive holding a key decision-making position, or that person's designee.

Project means the proposed or authorized activity (or activities) the purpose of which fulfills EDA's mission and program requirements as set forth in PWEDA and this chapter and which may be funded in whole or in part by EDA Investment Assistance.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*), including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756).

Recipient means an entity receiving EDA Investment Assistance, including any EDA-approved successor to the entity.

Region or *Regional* means an economic unit of human, natural, technological, capital or other resources, defined geographically. Geographic areas comprising a Region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development. For the limited purposes of determining economic distress levels and Investment Rates pursuant to part 301 of this chapter, a Region may also comprise a specific geographic area defined solely by its level of economic distress, as set forth in §§ 301.3(a)(2) and 301.3(a)(3) of this chapter.

Regional Commission means any of the following:

(1) The Appalachian Regional Commission established under chapter 143 of title 40, United States Code;

(2) The Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa *et seq.*);

(3) The Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 *et seq.*); or

(4) The Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb *et seq.*).

Special Impact Area means a Region served by a Project for which the requirements of section 302 of PWEDA and § 303.7 of this chapter have, upon an application filed by an Eligible Recipient pursuant to section 214 of PWEDA and part 310 of this chapter, been waived in whole or in part by the Assistant Secretary.

Special Need means a circumstance or legal status arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, including:

(1) Substantial outmigration or population loss;

(2) Underemployment; that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit;

(3) Military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions;

(4) Natural or other major disasters or emergencies;

(5) Extraordinary depletion of natural resources;

(6) Closing or restructuring of an industrial firm or loss of a major employer;

(7) Negative effects of changing trade patterns; or

(8) Other circumstances set forth in an FFO.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Trade Act means title II, chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

United States means all of the States.

PART 301— ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS

Subpart A—General

Sec.
301.1 Overview of eligibility requirements.

Subpart B—Applicant Eligibility

301.2 Applicant eligibility.

Subpart C—Economic Distress Criteria

301.3 Economic distress levels.

Subpart D—Investment Rates and Matching Share Requirements

301.4 Investment rates.
301.5 Matching share requirements.
301.6 Supplementary investment assistance.

Subpart E—Proposal and Application Requirements; Evaluation Criteria

301.7 Investment assistance proposal.
301.8 Proposal evaluation criteria.
301.9 Proposal selection criteria.
301.10 Formal application requirements.

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

Subpart A—General

§ 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, an applicant and the Project proposed by the applicant must satisfy each of the following requirements:

(a) The applicant must be an Eligible Applicant as set forth in subpart B of this part;

(b) The Region in which the Project will be located must meet the economic distress criteria set forth in subpart C of this part;

(c) The sources of funding for the Project must fulfill the Investment Rate

and Matching Share requirements set forth in subpart D of this part;

(d) EDA must select the Eligible Applicant's Project and the Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part; and

(e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter.

Subpart B—Applicant Eligibility

§ 301.2 Applicant eligibility.

(a) An Eligible Applicant for EDA Investment Assistance is defined in § 300.3 of this chapter.

(b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA may waive this cooperation requirement for certain Projects of a significant Regional or national scope under parts 306 or 307 of this chapter. See §§ 306.3(b), 306.6(b) and 307.5(b) of this chapter.

Subpart C—Economic Distress Criteria

§ 301.3 Economic distress levels.

(a) *Part 305 (Public Works and Economic Development Investments) and part 307 (Economic Adjustment Assistance Investments).*

(1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to one (or more) of the following economic distress criteria:

(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) percent greater than the national average unemployment rate;

(ii) Per capita income that is, for the most recent period for which data are available, eighty (80) percent or less of the national average per capita income; or

(iii) A Special Need, as determined by EDA.

(2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria of paragraph (a)(1) of this section, is also eligible for Investment Assistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of ''substantial direct benefit'' to a geographic area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a ''substantial direct benefit'' if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographic area within the District.

(3) A Project located in a geographic area of poverty or high unemployment that meets the requirements of paragraph (a)(1) of this section, but which is located in a Region that overall does not meet the requirements of paragraph (a)(1) of this section, is eligible for Investment Assistance under parts 305 or 307 of this chapter without regard to political or other subdivisions or boundaries.

(4) EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

(i) For economic distress levels based upon the unemployment rate or per capita income requirements, EDA will base its determination upon the most recent American Community Survey (''*ACS*'') published by the U.S. Census Bureau for either: The Region where the Project will be located (paragraph (a)(1) of this section), the geographic area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographic area of poverty or high unemployment (paragraph (a)(3) of this section), as applicable. Where a recent ACS is not available, EDA will base its decision upon the most recent Federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or any other Federal source determined by EDA to be appropriate). If no Federal data are available, an Eligible Applicant must submit to EDA the most recent data available from the State.

(ii) For economic distress based upon a Special Need, EDA will conduct the independent analysis it deems necessary under the facts and circumstances of a given case. Eligible Applicants are encouraged to submit reliable data substantiating their claim of a Special Need.

(b) *Part 303 (Planning Investments) and part 306 (Training, Research and Technical Assistance Investments).* There are no minimum economic distress level requirements for Investment Assistance awarded to Projects under parts 303 or 306 of this chapter.

(c) *Part 304 (Economic Development Districts).* For EDA to designate a Region as an Economic Development District under part 304 of this chapter, such Region must:

(1) Contain at least one (1) geographic area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and

(2) Meet the Regional eligibility requirements set forth in § 304.1 of this chapter.

(d) EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable.

Subpart D—Investment Rates and Matching Share Requirements

§ 301.4 Investment rates.

(a) *Minimum Investment Rate.* There is no minimum Investment Rate for a Project.

(b) *Maximum Investment Rate.*

(1) *General rule.* Except as otherwise provided by this paragraph (b) or paragraph (c) of this section, the maximum EDA Investment Rate for all Projects shall, after the application of Table 1 in paragraph (b)(1)(ii) of this subsection, not exceed the sum of: (x) Fifty (50) percent, plus (y) up to an additional thirty (30) percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

(i)(A) *Relative needs.* In determining the relative needs of the Region in which the Project is located, EDA will prioritize allocations of its Investment Assistance to ensure that the level of economic distress of a Region, rather than a preference for a specific geographic area or a specific type of economic distress, is the primary factor in allocating its Investment Assistance. In making this determination, EDA will take into consideration the following measures of economic distress:

(*1*) The severity of the unemployment rate and the duration of the unemployment in the Region;

(*2*) The per capita income levels and the extent of underemployment in the Region;

(*3*) The outmigration of population and the extent to which such

outmigration is causing economic injury in the Region; and

(*4*) Such other factors as EDA deems relevant in determining the relative needs of the Region in which the Project is located.

(B) A Project is eligible for the maximum allowable Investment Rate as determined by EDA between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project; however, the burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located.

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (*i.e.*, where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or	50
(H) The per capita income is not more than 80% of the national average	50

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this chapter shall be fifty (50) percent.

(ii) Except as otherwise provided in paragraph (b)(3)(iii) of this section or in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (*e.g.*, parish) within the Region. The maximum allowable Investment Rate shall not exceed eighty (80) percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (b)(3)(ii) of this section. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

(4) *Projects under part 306.* The maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. However, for Projects of a national scope under part 306 of this chapter and for all other Projects under part 306 of this chapter (after the application of paragraph (b)(1) of this section), the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

(5) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

TABLE 2

Projects	Maximum allowable investment rates (percentage)
Projects of Indian Tribes	100
Projects under part 307 of this chapter located in Presidentially-Declared Disaster areas for which EDA receives an application for Investment Assistance for post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration	100
Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity	100
Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 of this chapter	100
Projects located in a District that receive planning performance awards pursuant to § 308.3 of this chapter	100

(c) Federal Funding Opportunity notices may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating Investment Assistance.

§ 301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must show that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance.

§ 301.6 Supplementary investment assistance.

(a) Pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement grants awarded in another ''designated Federal grant program,'' if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-Federal share because of the Eligible Applicant's economic situation. For purposes of this section, a ''designated Federal grant program'' means any Federal grant program that:

(1) Provides assistance in the construction or equipping of public works, public service or development facilities;

(2) Is designated by EDA as eligible for supplementary Investment Assistance under this section; and

(3) Assists Projects that are otherwise eligible for Investment Assistance and consistent with the Eligible Applicant's CEDS.

(b) For Projects located in Regions meeting the criteria of § 301.3(a), the EDA Investment Assistance, combined with funds from a designated Federal grant program, may be at the maximum allowable Investment Rate, even if the designated Federal grant program has a lower grant rate. If the designated Federal grant program has a grant rate higher than the maximum EDA Investment Rate, the combination of EDA Investment and other Federal funds may exceed the EDA Investment Rate; provided, the EDA share of total funding does not exceed the maximum allowable Investment Rate.

Subpart E—Proposal and Application Requirements; Evaluation Criteria

§ 301.7 Investment Assistance proposal.

(a) The EDA Investment Assistance process begins with the submission of an Investment Assistance proposal. Investment proposals are submitted on a Pre-application for Investment Assistance (Form ED–900P or any successor form) that may be obtained from EDA's Internet Web site at *http://www.eda.gov* or from the appropriate regional office. EDA generally accepts proposals on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all proposals using the criteria set forth in § 301.8 and will:

(1) Solicit a formal application from the proponent;

(2) Return the proposal to the proponent for specified deficiencies and suggest resubmission upon corrections; or

(3) Deny the proposal for specifically stated reasons and notify the proponent.

(b) For certain programs, EDA may instruct an Eligible Applicant to submit an Application for Investment Assistance (Form ED–900A or any successor form) in lieu of the Pre-application for Investment Assistance (Form ED–900P or any successor form).

§ 301.8 Proposal evaluation criteria.

EDA will screen all proposals for the feasibility of the budget presented and conformance with EDA statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the proponent to implement the proposed Project. EDA will also consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) *Is market-based and results driven.* An Investment will capitalize on a Region's competitive strengths and will positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system, such as EDA's Balanced Scorecard or other performance matrix. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) *Has strong organizational leadership.* An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) *Advances productivity, innovation and entrepreneurship.* An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

(d) *Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy.* An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) *Demonstrates a high degree of local commitment.* An Investment will exhibit:

(1) High levels of local government or non-profit Matching Share and private sector leverage;

(2) Clear and unified leadership and support by local elected officials; and

(3) Strong cooperation among the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

§ 301.9 Proposal selection criteria.

(a) EDA will review completed proposal materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable Federal statutes and regulations. From those proposals that meet EDA's technical and legal requirements, EDA will select proposals for further consideration based on:

(1) The availability of funds;

(2) The competitiveness of the proposals based on the criteria set forth in § 301.8; and

(3) The funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify proponents regarding whether their proposals are selected as soon as practicable.

§ 301.10 Formal application requirements.

(a) *General.* For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies.

(b) *Formal application.* Each formal application for EDA Investment Assistance must:

(1) Include evidence of applicant eligibility (as set forth in § 301.2) and of economic distress (as set forth in § 301.3);

(2) Identify the sources of funds, both eligible Federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(3) For construction Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:

(i) Strategy Grants, as defined in § 307.3 of this chapter; and

(ii) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

Sec.

302.1 Environment.
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302.17 Conflicts of interest.
302.18 Post-approval requirements.
302.19 Indemnification.
302.20 Civil rights.

Authority: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10–4.

§ 302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR chapter V) (*''NEPA''*), and all applicable Federal environmental statutes, regulations and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects can be obtained from the Environmental Officer in the appropriate EDA regional office as listed in the applicable FFO.

§ 302.2 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for Investment Assistance awards under PWEDA cannot be met by an Eligible Applicant as the result of a disaster, EDA may waive such conditions.

§ 302.3 Project servicing for loans, loan guaranties and Investment Assistance.

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under any EDA-administered program. Project servicing includes but is not limited to loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95–31; 42 U.S.C. 5184 note).

(a) EDA will continue to monitor such loans and loan guaranties in accordance with the applicable loans or loan guaranty program(s).

(b) Borrowers and lenders shall submit to EDA any requests for modifications of their loan or loan guaranty agreements with EDA, as applicable. EDA shall consider and respond to such modification requests in accordance with applicable laws and policies, including the budgetary constraints imposed by the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661c(e)).

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans, loan guaranties or evidence of purchased debt, EDA may:

(1) Assign or sell at public or private sale or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance extended under PWEDA;

(2) Collect or compromise all obligations assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA until such time as such obligations may be referred to the Attorney General of the United States for suit or collection; and

(3) Take any and all other actions determined to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively processing or disposing of loans or loan guaranties made or evidence of purchased debt in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA.

§ 302.4 Public information.

The rules and procedures regarding public access to EDA's records pursuant to the Freedom of Information Act of 1967, as amended (5 U.S.C. 552), and the Privacy Act of 1974, as amended (5 U.S.C. 552a), are at 15 CFR part 4.

§ 302.5 Relocation assistance and land acquisition policies.

Recipients of EDA Investment Assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits organizations, as applicable) are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646; 42 U.S.C. 4601 *et seq.*). *See* 15 CFR part 11 and 49 CFR part 24 for specific compliance requirements.

§ 302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department and EDA policies, regulations and procedures applicable to Federal financial assistance awards, including but not limited to 15 CFR part 14, the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations, and 15 CFR part 24, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

§ 302.7 Amendments and changes.

(a) Recipients shall submit requests for amendments to Investment awards in writing to EDA for approval and shall provide such information and

documentation as EDA deems necessary to justify the request.

(b) Any changes to Projects made without EDA's approval are made at the Recipient's risk of non-payment of costs, suspension, termination or other applicable EDA action with respect to the Investment.

§ 302.8 Pre-approval Investment Assistance costs.

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or Federal requirements, including but not limited to procurement requirements, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation and related requirements.

§ 302.9 Inter-governmental review of projects.

(a) When an Eligible Applicant is not a State, Indian Tribe or other general purpose governmental authority, the Eligible Applicant must afford the appropriate general purpose local governmental authority (the ''*Authority*'') in the Region a minimum of fifteen (15) days to review and comment on a proposed Project under EDA's Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA's Economic Adjustment Assistance program. Under these programs, Eligible Applicants shall furnish the following with their applications: If no comments are received from the Authority, a statement of efforts made to obtain such comments; or, if comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.

(b) As required by 15 CFR part 13 and Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as amended, if a State has adopted a process under Executive Order 12372 to review and coordinate proposed Federal financial assistance and direct Federal development (commonly referred to as the ''single point of contact review process''), all Eligible Applicants must also give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13.

§ 302.10 Attorneys' and consultants' fees; employment of expediters and administrative employees.

(a) *General.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA.

(b) *Employment of expediters and administrative employees.* Investment Assistance under PWEDA shall not be awarded to any Eligible Applicant, unless the owners, partners or officers of the Eligible Applicant:

(1) Certify to EDA the names of any attorneys, agents and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting applications made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person for expediting the applications; and

(2) Upon EDA's request, execute an agreement binding the Eligible Applicant, for the two-year (2) period beginning on the date on which the Investment Assistance is awarded to the Eligible Applicant, to refrain from employing, offering any office or employment to or retaining for professional services any person who, on the date on which the Investment Assistance is awarded or within the one-year (1) period ending on that date:

(i) Served as an officer, attorney, agent or employee of the Department; and

(ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

§ 302.11 Economic development information clearinghouse.

Pursuant to section 502 of PWEDA, EDA maintains an economic development information clearinghouse on its Internet Web site at *http://www.eda.gov.*

§ 302.12 Project administration, operation and maintenance.

EDA shall approve Investment Assistance awards only if, as determined in its sole discretion, the Project for which such Investment Assistance is awarded will be properly and efficiently administered, operated and maintained.

§ 302.13 Maintenance of standards.

All laborers and mechanics employed by contractors or subcontractors on Projects receiving Investment Assistance under PWEDA shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. EDA shall not extend any Investment Assistance under this chapter for a Project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The U.S. Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 FR 3176 (May 25, 1950); 64 Stat. 1267) and section 3145 of title 40, United States Code.

§ 302.14 Records and audits.

(a) *Records.* Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:

(1) The amount and the disposition by the Recipient of the proceeds of the awarded Investment Assistance;

(2) The total cost of the Project that the Investment Assistance funds;

(3) The amount and nature of the portion of Project costs provided by other sources; and

(4) Such other records as EDA determines will facilitate an effective audit.

(b) *Audits.* The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States and/or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.

§ 302.15 Acceptance of certifications by Eligible Applicants.

EDA will accept an Eligible Applicant's certifications, accompanied by evidence satisfactory to EDA, that the Eligible Applicant meets the requirements for receiving Investment Assistance.

§ 302.16 Reports by Recipients.

(a) In general, each Recipient must submit reports to EDA at intervals and in the manner that EDA shall require, except that EDA shall not require any report to be submitted more than ten (10) years after the date of closeout of the Investment Assistance.

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives

of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.

(c) To enable EDA to determine the economic development effect of Projects that provide service benefits, EDA may require that Recipients submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

§ 302.17 Conflicts of interest.

(a) *General.* It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (*e.g.*, procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict may also exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

(b) *Prohibition on direct or indirect financial or personal benefits.*

(1) An Interested Party shall not receive any direct or indirect, financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient. Recipients shall establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or of personal gain. *See also* 15 CFR 14.42 and 24.36(b)(3); Forms SF–424B and SF–424D.

(2) An Interested Party shall also not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.

(3) Costs incurred in violation of any conflicts of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied reimbursement.

(4) *See* § 315.15 of this chapter for special conflicts of interest rules for Trade Adjustment Assistance Investments.

(c) *Special rules for Revolving Loan Fund (''RLF'') Grants.* In addition to the rules set forth in this section:

(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;

(2) A Recipient of an RLF Grant shall also not lend RLF funds to an Interested Party; and

(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from such RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

§ 302.18 Post-approval requirements.

(a) *General.* A Recipient must comply with all financial, performance, progress report and other requirements set forth in the terms and conditions of the Investment Assistance, including any special terms and applicable Federal cost principles (collectively, ''*Post-Approval Requirements*''). A Recipient's failure to comply with Post-Approval Requirements may result in the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

(b) *Part 307 (Economic Adjustment Assistance Investments*). Recipients of Economic Adjustment Assistance Investments under part 307 of this chapter must comply with the Post-Approval Requirements set forth in § 307.6 of this chapter.

§ 302.19 Indemnification.

To the maximum extent permitted by law, a Recipient shall indemnify and hold EDA harmless from any liability that EDA may incur due to the actions or omissions of the Recipient.

§ 302.20 Civil rights.

(a) Discrimination is prohibited by a Recipient or Other Party (as defined in paragraph (b) of this section) with respect to a Project receiving Investment Assistance under PWEDA or by an entity receiving Adjustment Assistance (as defined in § 315.2 of this chapter) under the Trade Act, in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*) (proscribing discrimination on the basis of race, color, or national origin), and the Department's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 CFR 8.7 through 8.15;

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the basis of disabilities), and the Department's implementing regulations found at 15 CFR part 8b;

(4) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*) (proscribing discrimination on the basis of age), and the Department's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders, as applicable.

(b) *Definitions.* (1) For purposes of this section, an ''*Other Party*'' means an ''other party subject to this part,'' as defined in 15 CFR 8.3(l), and includes an entity which (or which is intended to) creates and/or saves fifteen (15) or more permanent jobs as a result of Investment Assistance; provided that such entity is also either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of Investment Assistance funds.

(2) Additional applicable definitions are provided in 15 CFR part 8.

(c) No Recipient or Other Party shall intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by 42 U.S.C. 3123 or 42 U.S.C. 6709, or because the person has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this section.

(d) All Recipients of Investment Assistance under PWEDA, all Other Parties and all entities receiving Adjustment Assistance under the Trade Act must submit to EDA written assurances that they will comply with applicable laws, EDA regulations, Department regulations, and such other requirements as may be applicable, prohibiting discrimination.

(e) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8a, 8b, 8c and 20.

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

Sec.
303.1 Purpose and scope.
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Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 303.1 Purpose and scope.

The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision or replacement of Comprehensive Economic Development Strategies, and for related short-term Planning Investments and State plans designed to create and retain higher-skill, higher-wage jobs, particularly for the unemployed and underemployed in the nation's most economically distressed Regions. EDA's Planning Investments support partnerships with District Organizations, Indian Tribes, community development corporations, non-profit regional planning organizations and other Eligible Recipients. Planning activities supported by these Investments must be part of a continuous process involving the active participation of Private Sector Representatives, public officials and private citizens, and include:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining Project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 303.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Planning Investment means the award of EDA Investment Assistance under section 203 of PWEDA and this part.

Planning Organization means a Recipient whose purpose is to develop and implement a CEDS for a specific EDA-approved Region under section 203 of PWEDA.

Strategy Committee means the committee or other entity identified by the Planning Organization as responsible for the development, implementation, revision or replacement of the CEDS for the Planning Organization.

§ 303.3 Application requirements and evaluation criteria.

(a) For Planning Investment awards, EDA uses the general application evaluation criteria set forth in § 301.8 of this chapter. In addition, applications for Planning Investments must include information about the following:

(1) The proposed scope of work for the development, implementation, revision or replacement of the CEDS, or the relation of the CEDS to the proposed short-term planning activities or the State plan;

(2) Qualifications of the Eligible Applicant to implement the goals and objectives resulting from the CEDS, short-term planning activities or the State plan;

(3) The involvement of the Region's business leadership at each stage of the preparation of the CEDS, short-term planning activities or State plan;

(4) Extent of broad-based representation and involvement of the Region's civic, business, labor, minority and other interests in the Eligible Applicant's economic development activities; and

(5) Feasibility of the proposed scope of work to create and retain higher-skill, higher-wage jobs through implementation of the CEDS.

(b) In addition to the criteria set forth in paragraph (a) of this section, funded Recipients are evaluated on the basis of the extent of continuing economic distress within the Region, their past performance, and the overall effectiveness of their CEDS.

(c) For Planning Investment awards to a State, the Assistant Secretary shall also consider the extent to which the State will integrate and coordinate its CEDS with local and Economic Development District plans.

(d) The Investment Rates for Planning Investments will be determined in accordance with § 301.4 of this chapter.

§ 303.4 Award requirements.

(a) Planning Investments shall function in conjunction with any other available Federal, State or local planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Except in compelling circumstances as determined by the Assistant Secretary, EDA will not provide Planning Investments for multiple CEDS that address the needs of an identical or substantially similar Region.

(c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in thirty-six (36) month renewable Investment award periods.

§ 303.5 Eligible administrative expenses.

In accordance with applicable Federal cost principles, Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development, implementation, revision or replacement of a CEDS and for related short-term planning activities.

§ 303.6 EDA-funded CEDS process.

If EDA awards Investment Assistance to a Planning Organization to develop, revise or replace a CEDS, the Planning Organization must follow the procedures set forth in this section:

(a) The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region and must include Private Sector Representatives as a majority of its membership. In addition, the Planning Organization should ensure that the Strategy Committee includes public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. The Strategy Committee representing Indian Tribes or States may vary.

(b) The Planning Organization must develop and submit to EDA a CEDS that:

(1) Complies with the requirements of § 303.7; and

(2) Was made available for review and comment by the public for a period of at least thirty (30) days prior to submission to EDA.

(c)(1) After obtaining EDA approval of the CEDS, the Planning Organization must submit annually an updated CEDS performance report to EDA.

(2) The Planning Organization must submit a new or revised CEDS to EDA at least every five (5) years, unless EDA or the Planning Organization determines

that a new or revised CEDS is required earlier due to changed circumstances.

(3) Any updated CEDS performance report that results in a change of the requirements set forth in § 303.7(b)(3) of the EDA-accepted CEDS or any new or revised CEDS, must be available for review and comment by the public in accordance with paragraph (b)(2) of this section.

(d) If EDA determines that implementation of the CEDS is inadequate, it will notify the Planning Organization in writing and the Planning Organization shall submit to EDA a new or revised CEDS.

(e) If any part of a Region is covered by one or more of the Regional Commissions as set forth in section 404 of PWEDA, the Planning Organization shall ensure that a copy of the CEDS is provided to the Regional Commission(s).

§ 303.7 Requirements for Comprehensive Economic Development Strategies.

(a) *General.* CEDS are designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen Regional economies. The CEDS should analyze the Regional economy and serve as a guide for establishing Regional goals and objectives, developing and implementing a Regional plan of action, and identifying investment priorities and funding sources. Public and private sector partnerships are critical to the implementation of the integral elements of a CEDS set forth in paragraph (b) of this section. As a performance-based plan, the CEDS will serve a critical role in a Region's efforts to defend against economic dislocations due to global trade, competition and other events resulting in the loss of jobs and private investment.

(b) *Technical requirements.* A CEDS must be the result of a continuing economic development planning process, developed with broad-based and diverse public and private sector participation, and shall contain the following:

(1) A background of the economic development situation of the Region with a discussion of the economy, population, geography, workforce development and use, transportation access, resources, environment and other pertinent information;

(2) An in-depth analysis of economic and community development problems and opportunities, including:

(i) Incorporation of relevant material from other government-sponsored or supported plans and consistency with applicable State and local workforce investment strategies; and

(ii) An identification of past, present and projected future economic development investments in the Region covered;

(3) A section setting forth goals and objectives necessary to solve the economic development problems of the Region;

(4) A discussion of community and private sector participation in the CEDS effort;

(5) A section listing all suggested Projects and the projected numbers of jobs to be created as a result thereof;

(6) A section identifying and prioritizing vital Projects, programs and activities that address the Region's greatest needs or that will best enhance the Region's competitiveness, including sources of funding for past and potential future Investments;

(7) A section identifying economic clusters within the Region, focusing on those that are growing or in decline;

(8) A plan of action to implement the goals and objectives of the CEDS, including:

(i) Promoting economic development and opportunity;

(ii) Fostering effective transportation access;

(iii) Enhancing and protecting the environment;

(iv) Maximizing effective development and use of the workforce consistent with any applicable State or local workforce investment strategy;

(v) Promoting the use of technology in economic development, including access to high-speed telecommunications;

(vi) Balancing resources through sound management of physical development; and

(vii) Obtaining and utilizing adequate funds and other resources; and

(9) A list of performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS, including but not limited to the following:

(i) Number of jobs created after implementation of the CEDS;

(ii) Number and types of investments undertaken in the Region;

(iii) Number of jobs retained in the Region;

(iv) Amount of private sector investment in the Region after implementation of the CEDS; and

(v) Changes in the economic environment of the Region; and

(10) A section outlining the methodology for cooperating and integrating the CEDS with a State's economic development priorities.

(c) *Consideration of non-EDA funded CEDS.*

(1) In determining the acceptability of a CEDS prepared independently of EDA Investment Assistance or oversight for Projects under parts 305 and 307 of this chapter, EDA may in its discretion determine that the CEDS is acceptable without fulfilling all the requirements of paragraph (b) of this section. In doing so, EDA shall consider the circumstances surrounding the application for Investment Assistance, including emergencies or natural disasters and the fulfillment of the requirements of section 302 of PWEDA.

(2) If the CEDS for a Project under parts 305 and 307 of this chapter is developed under another federally-supported program, it must include acceptable performance measures similar to those set forth in paragraph (b) of this section and information on the state of the Regional economy. To the maximum extent practicable, the CEDS shall be consistent and coordinated with any existing economic development plan for the Region.

§ 303.8 Requirements for State plans.

(a) As a condition of a State receiving a Planning Investment:

(1) The State must have or develop a CEDS that meets the requirements of § 303.7;

(2) Any State plan developed with Planning Investment Assistance must, to the maximum extent practicable, be developed cooperatively by the State, political subdivisions of the State, and the Economic Development Districts located wholly or partially in the State; and

(3) The State must submit to EDA an annual report on any State plan receiving Planning Investment Assistance.

(b) Before awarding a Planning Investment to a State, EDA shall consider the extent to which the State will take into account local and District economic development plans.

§ 303.9 Requirements for short-term Planning Investments.

(a) In addition to providing support for CEDS and State plans, EDA may also provide Investment Assistance to support short-term planning activities. EDA may provide such Investment Assistance to:

(1) Develop the economic development planning capacity of States, cities and other Eligible Applicants experiencing economic distress;

(2) Assist in institutional capacity building; or

(3) Undertake innovative approaches to economic development.

(b) Eligible activities may include but are not limited to updating a portion of

a CEDS, economic analysis, development of economic development policies and procedures, and development of economic development goals.

(c) Applicants for short-term Planning Investments must provide performance measures acceptable to EDA that can be used to evaluate the success of the program and provide EDA with progress reports during the term of the Planning Investment, as set forth in the Investment agreement.

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

Sec.

304.1 Designation of Economic Development Districts: Regional eligibility.
304.2 District Organizations: Formation, organizational requirements and operations.
304.3 District modification and termination.
304.4 Performance evaluations.

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

§ 304.1 Designation of Economic Development Districts: Regional eligibility.

Upon the request of a District Organization (as defined in § 304.2), EDA may designate a Region as an Economic Development District if such Region:

(a) Contains at least one (1) geographic area that is subject to the economic distress criteria set forth in § 301.3(a)(1) of this chapter and is identified in an approved CEDS;

(b) Is of sufficient size or population and contains sufficient resources to foster economic development on a scale involving more than a single geographic area subject to the economic distress criteria set forth in § 301.3(a)(1) of this chapter;

(c) Has an EDA-approved CEDS that

(1) Meets the requirements under § 303.7 of this chapter;

(2) Contains a specific program for intra-District cooperation, self-help, and public investment; and

(3) Is approved by each affected State and by the Assistant Secretary;

(d) Obtains commitments from at least a majority of the counties or other areas within the proposed District, as determined by EDA, to support the economic development activities of the District; and

(e) Obtains the concurrence with the designation request from the State (or States) in which the proposed District will be wholly or partially located.

§ 304.2 District Organizations: Formation, organizational requirements and operations.

(a) *General.* A ''*District Organization*'' is an entity that satisfies the formation and organizational requirements under paragraphs (b) and (c) of this section.

(b) *Formation.* A District Organization must be organized as one of the following:

(1) A public organization formed through an inter-governmental agreement providing for the joint exercise of local government powers; or

(2) A public organization established under State-enabling legislation for the creation of multi-jurisdictional area-wide planning organizations; or

(3) A non-profit organization incorporated under the applicable non-profit statutes of the State in which it is incorporated.

(c) *Organization and governance.*

(1) Each District Organization must meet the requirements of this paragraph (c) concerning membership composition, the maintenance of adequate staff support to perform its economic development functions, and its authorities and responsibilities for carrying out economic development functions. The District Organization's board of directors (or other governing body) must also meet these requirements.

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, and, unless otherwise prohibited by applicable State or local law, must include at least one (1) Private Sector Representative and one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups or labor groups, all of which must comprise in the aggregate a minimum of thirty-five (35) percent of the District Organization's governing body. The governing body shall also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of State, local or Indian tribal government who have been appointed to represent the government. Upon the District Organization's showing of its inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence, the Assistant Secretary may waive the Private Sector Representative requirement. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

(3) The District Organization must be assisted by a professional staff drawn from qualified persons in economic development, planning, business development or related disciplines.

(4) The governing bodies of District Organizations must provide access for persons who are not members to make their views known concerning ongoing and proposed District activities in accordance with the following requirements:

(i) The District Organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of such meetings sufficiently in advance to allow the public a reasonable time to prepare in order to participate effectively.

(ii) The District Organization shall adopt a system of parliamentary procedures to assure that board members and others have access to an effective opportunity to participate in the affairs of the District.

(iii) The District Organization shall provide information sufficiently in advance of decisions to give the public adequate opportunity to review and react to proposals. District Organizations should communicate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

(iv) The District Organization must make available to the public such audited statements, annual budgets and minutes of public meetings, as may be reasonably requested.

(v) The District Organization and its board of directors must comply with all Federal and State financial assistance reporting requirements and the conflicts of interest provisions set forth in § 302.17 of this chapter.

(d) *Operations.* (1) The District Organization shall engage in the full range of economic development activities listed in its EDA-approved CEDS. These activities may include:

(i) Coordinating and implementing economic development activities in the District;

(ii) Carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and

(iii) Coordinating the development and implementation of the CEDS with other local, State, Federal and private organizations.

(2) The District Organization may at its option contract for services to accomplish the activities listed in paragraphs (d)(1)(i) through (iii) of this section.

§ 304.3 District modification and termination.

(a) *Modification.* Upon the request of a District Organization and with the

concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), EDA may modify the geographic boundaries of a District, if it determines that such modification will contribute to a more effective program for economic development.

(b) *Termination.* EDA may, upon sixty (60) days prior written notice to the District Organization, member counties and other areas determined by EDA and each affected State, terminate a Region's designation as an Economic Development District when:

(1) A District or District Organization no longer meets the requirements of §§ 304.1 or 304.2; or

(2) EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth therein; or

(3) A District Organization has requested termination.

(c) Prior to terminating a District Organization under paragraph (b)(2) of this section, EDA will consult with the District Organization and consider all facts and circumstances regarding the District Organization's operations. EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (*e.g.*, natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

(d) EDA may further modify or terminate a Region's designation as a District according to the standards set forth in an FFO.

§ 304.4 Performance evaluations.

(a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District Organization continues to receive Investment Assistance. EDA's evaluation shall assess:

(1) The continuing Regional eligibility of the District, as set forth in § 304.1;

(2) The management of the District Organization, as set forth in § 304.2; and

(3) The implementation of the CEDS, including the District Organization's performance and contribution towards the retention and creation of employment, as set forth in § 303.7 on this chapter.

(b) For peer review, EDA shall ensure the participation of at least one (1) other District Organization in the performance evaluation on a cost-reimbursement basis.

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

Subpart A—General

Sec.
305.1 Purpose and scope.
305.2 Award requirements.
305.3 Application requirements.
305.4 Projects for design and engineering work.

Subpart B—Requirements for Approved Projects

305.5 Project administration by District Organization.
305.6 Allowable methods of procurement for construction services.
305.7 Services performed by the Recipient's own forces.
305.8 Recipient-furnished equipment and materials.
305.9 Project phasing and Investment disbursement.
305.10 Bid underrun.
305.11 Contract awards; early construction start.
305.12 Project sign.
305.13 Contract change orders.
305.14 Occupancy prior to completion.

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 305.1 Purpose and scope.

Public Works and Economic Development Investments (''*Public Works Investments*'') intend to help the nation's most distressed communities revitalize, expand and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies and generate or retain long-term private sector jobs and investments. The primary goal of these Investments is the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by chronic high unemployment, underemployment, low per capita income, outmigration, or a Special Need. These Investments also intend to assist communities in attracting private capital investment and higher-skill, higher-wage job opportunities and to promote the successful long-term economic recovery of a Region.

§ 305.2 Award requirements.

(a) *Project scope.* Public Works Investments may fund the following activities:

(1) Acquisition or development of land and improvements for use in a public works, public service or other type of development facility; or

(2) Acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) *Requirements.* A Public Works Investment may be made if EDA determines that:

(1) The Project will, directly or indirectly:

(i) Improve the opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the Region where the Project is located;

(ii) Assist in the creation of additional long-term employment opportunities in the Region; or

(iii) Primarily benefit the long-term unemployed and members of low-income families in the Region;

(2) The Project will fulfill a pressing need of the Region, or a part of the Region, in which the Project is located; and

(3) The Region in which the Project is located has a CEDS and the Project is consistent with the CEDS.

(c) Not more than fifteen (15) percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one (1) State.

§ 305.3 Application requirements.

(a) Each application for Public Works Investment Assistance must:

(1) Include evidence of eligibility, as provided in part 301 of this chapter;

(2) Include, or incorporate by reference, a CEDS (as provided in § 303.7 of this chapter);

(3) Demonstrate how the proposed Project meets the criteria of § 305.2; and

(4) Demonstrate how the proposed Project meets the proposal evaluation criteria set forth in § 301.8 of this chapter.

(b) The Investment Rate for Public Works Investments will be determined in accordance with § 301.4 of this chapter.

§ 305.4 Projects for design and engineering work.

In the case of Public Works Investment Assistance awarded solely for design and engineering work, the following additional application requirements and terms shall apply:

(a) EDA may determine that a separate Investment for design and engineering is warranted due to the technical complexity or environmental sensitivity of the construction Project;

(b) The purpose of the Investment may be limited to the development and

production of all documents required for the construction of the proposed construction Project in a format and in sufficient quantity to permit advertisement and award of a construction contract soon after securing construction financing for the Project;

(c) EDA will not disburse any portion of the Investment Assistance until it receives and certifies compliance with the Investment award of all design and engineering contracts; and

(d) EDA's funding of the Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

Subpart B—Requirements for Approved Projects

§ 305.5 Project administration by District Organization.

(a) When a District Organization is not the Recipient or co-Recipient of Investment Assistance, the District Organization may administer the Project for the Recipient if EDA determines fulfillment of the following conditions:

(1) The Recipient has requested (either in the application or by separate written request) that the District Organization for the Region in which the Project is located administer the Project;

(2) The Recipient certifies and EDA finds that:

(i) Administration of the Project is beyond the capacity of the Recipient's current staff and would require hiring additional staff or contracting for such services;

(ii) No local organization or business exists that could administer the Project in a more efficient or cost-effective manner than the staff of the District Organization; and

(iii) The staff of the District Organization would administer the Project without sub-contracting the work; and

(3) The allowable costs for the administration of the Project by the District Organization's staff will not exceed the amount that would be allowable to the Recipient.

(b) EDA must approve the request either by approving the application in which the request is made or by separate specific written approval.

§ 305.6 Allowable methods of procurement for construction services.

(a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/bid/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services;

(2) The scope of work with cost estimates and schedules;

(3) A copy of the proposed construction contract;

(4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

(b) For all procurement methods, the Recipient must comply with the procurement standards set forth in 15 CFR parts 14 or 24, as applicable.

§ 305.7 Services performed by the Recipient's own forces.

In certain circumstances, the Recipient may wish to consider having a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the Project performed by personnel who are employed by the Recipient either full-time or part-time. EDA may approve the use of such ''in-house forces'' if:

(a) The services are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal); or

(b) The Recipient has a special skill required for the construction of the Project (for example, construction of unique Indian structures); or

(c) The Recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the Project site or an overabundance of construction work in the Region; or

(d) The Recipient demonstrates substantial cost savings.

§ 305.8 Recipient-furnished equipment and materials.

The Recipient may wish to incorporate into the Project equipment or materials that it will secure through its own efforts, subject to the following requirements:

(a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value of such equipment;

(b) EDA may require the Recipient to establish that the expense claimed for such equipment or materials is competitive with current local market costs; and

(c) Acquisition of Recipient-furnished equipment and/or materials under this section is also subject to the requirements of 15 CFR parts 14 or 24, as applicable.

§ 305.9 Project phasing and Investment disbursement.

(a) EDA may authorize in advance the award of construction contracts in phases, provided the Recipient submits a request that includes each of the following:

(1) Valid reasons justifying why the Project must be phased;

(2) Description of the specific elements to be completed in each phase;

(3) Detailed construction cost estimates for each phase;

(4) Time schedules for completing all phases of the Project;

(5) Certification that the Recipient can and will fund any overrun(s); and

(6) Certification that the Recipient is capable of paying incurred costs prior to the first disbursement of EDA funds.

(b) EDA will begin disbursement of funds after receipt of evidence sufficient to EDA of compliance with all Investment award conditions. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the Recipient can demonstrate to EDA's satisfaction that a severe financial hardship will result without such approval.

§ 305.10 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.

§ 305.11 Contract awards; early construction start.

EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the terms and conditions of the Investment award in order for the costs to be eligible for EDA reimbursement. Pending this determination, the Recipient may issue a notice permitting construction under the contract to commence. If construction commences prior to EDA's determination, the Recipient proceeds at

its own risk until EDA review and concurrence. The EDA regional office will advise the Recipient of the requirements necessary to obtain EDA's determination.

§ 305.12 Project sign.

The Recipient shall be responsible for the construction, erection and maintenance in good condition throughout the construction period of a sign or signs at a conspicuous place at the Project site indicating that the Federal government is participating in the Project. The EDA regional office will provide mandatory specifications for the signage.

§ 305.13 Contract change orders.

(a) If it becomes necessary to alter the construction contracts post-execution, the Recipient and contractor shall agree to a formal contract change order.

(b) All contract change orders must receive EDA review for compliance with the terms and conditions of the Investment award, even if the Recipient is to pay for all additional costs resulting from the change or the change order reduces the contract price.

(c) Work on the Project may continue pending EDA review of the contract change order, but all such work will be at the Recipient's risk until EDA completes its review.

§ 305.14 Occupancy prior to completion.

Occupancy of any part of the Project prior to final acceptance is entirely at the Recipient's risk and must follow the requirements of local and State law.

PART 306—TRAINING, RESEARCH AND TECHNICAL ASSISTANCE INVESTMENTS

Subpart A—Local and National Technical Assistance

Sec.
306.1 Purpose and scope.
306.2 Award requirements.
306.3 Application requirements.

Subpart B—University Center Economic Development Program

306.4 Purpose and scope.
306.5 Award requirements.
306.6 Application requirements.
306.7 Performance evaluations of University Centers.

Authority: 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—Local and National Technical Assistance

§ 306.1 Purpose and scope.

(a) Local and National Technical Assistance Investments may:

(1) Determine the causes of excessive unemployment, underemployment, low per capita income, outmigration or other problems throughout the nation;

(2) Formulate and implement economic development tools, models, and innovative techniques that will alleviate or prevent conditions of excessive unemployment or underemployment;

(3) Formulate and implement economic development programs to increase local, regional and national capacity;

(4) Evaluate the effectiveness and economic impact of programs, projects and techniques to alleviate economic distress and promote economic development;

(5) Conduct project planning and feasibility studies;

(6) Provide management and operational assistance;

(7) Establish business outreach centers;

(8) Disseminate information about effective programs, projects and techniques that alleviate conditions of economic distress and promote economic development;

(9) Assess, market and establish business clusters and associations; or

(10) Perform other activities determined by EDA to be appropriate under the Local and National Technical Assistance program.

(b) Investment Assistance may not be used to start or expand a private business.

(c) EDA may identify specific training, research or technical assistance Projects it will fund, which will be subject to competition. Ordinarily, these Projects are specified in an FFO, which will provide the specific requirements, timelines and the appropriate points of contact and addresses.

(d) In providing Local and National Technical Assistance under this subpart, EDA, in addition to making Investments, may:

(1) Provide Local and National Technical Assistance through officers or employees of the Department;

(2) Pay funds made available to carry out this subpart to Federal Agencies; or

(3) Employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for this purpose.

§ 306.2 Award requirements.

EDA selects Projects for Local and National Technical Assistance Investments in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter and the extent to which the Project:

(a) Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to Regions of distress;

(b) Benefits distressed Regions;

(c) Demonstrates innovative approaches to stimulate economic development in distressed Regions;

(d) Is consistent with an EDA-approved CEDS, as applicable, for the Region in which the Project is located; and

(e) Meets the criteria outlined in the applicable FFO.

§ 306.3 Application requirements.

(a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, generally not to exceed twelve (12) to eighteen (18) months.

(b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

(c) The Investment Rate for Investments under this subpart shall be determined in accordance with § 301.4(b)(4) of this chapter.

Subpart B—University Center Economic Development Program

§ 306.4 Purpose and scope.

The University Center Economic Development Program is intended to help improve the economies of distressed Regions. Institutions of higher education have many assets, such as faculty, staff, libraries, laboratories and computer systems that can address local economic problems and opportunities. With Investment Assistance, institutions of higher education establish and operate research centers (''University Centers'') that provide technical assistance to public and private sector organizations with the goal of enhancing local economic development.

§ 306.5 Award requirements.

EDA provides Investment Assistance to University Center Projects in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter, the competitive selection process outlined in the applicable FFO, and the extent to which the Project:

(a) Addresses the economic development needs, issues and opportunities of the Region and will benefit distressed areas in the Region;

(b) Provides service and value that are unique and will maximize coordination with other organizations in the Region;

(c) Has the commitment and support (both financial and non-financial) of the highest management levels of the sponsoring institution;

(d) Outlines activities consistent with the expertise of the proposed staff, academic programs and other resources available within the sponsoring institution; and

(e) Documents past experience of the sponsoring institution in operating technical assistance programs.

§ 306.6 Application requirements.

(a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, as specifically outlined in the applicable FFO.

(b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

(c) The Investment Rate for Investments under this subpart shall be determined in accordance with § 301.4(b)(4) of this chapter.

(d) At least eighty (80) percent of EDA funding must be allocated to direct costs of program delivery.

§ 306.7 Performance evaluations of University Centers.

(a) EDA will:

(1) Evaluate each University Center within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as such University Center continues to receive Investment Assistance; and

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, meeting program performance objectives (as evidenced by retention and creation of employment opportunities) and disseminating Project results in accordance with the scope of work funded during the evaluation period.

(b) The performance evaluation will determine in part whether a University Center can compete to receive Investment Assistance under the University Center Economic Development Program for the following Investment Assistance cycle.

(c) For peer review, EDA shall ensure the participation of at least one (1) other University Center in the performance evaluation on a cost-reimbursement basis.

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

Subpart A—General

Sec.

307.1 Purpose.
307.2 Criteria for Economic Adjustment Assistance Investments.
307.3 Use of Economic Adjustment Assistance Investments.
307.4 Award requirements.
307.5 Application requirements.
307.6 Economic Adjustment Assistance post-approval requirements.

Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds

307.7 Revolving Loan Funds established for business lending.
307.8 Definitions.
307.9 Revolving Loan Fund Plan.
307.10 Pre-loan requirements.
307.11 Disbursement of funds to Revolving Loan Funds.
307.12 Revolving Loan Fund Income.
307.13 Records and retention.
307.14 Revolving Loan Fund semi-annual and annual reports.
307.15 Prudent management of Revolving Loan Funds.
307.16 Effective utilization of Revolving Loan Funds.
307.17 Uses of capital.
307.18 Addition of lending areas; merger of RLFs.
307.19 RLF loan portfolio Sales and Securitizations.
307.20 Partial liquidation and liquidation upon termination.
307.21 Termination of Revolving Loan Funds.
307.22 Variances.

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 307.1 Purpose.

The purpose of Economic Adjustment Assistance Investments is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(a) Military base closures or realignments, defense contractor reductions in force, or U.S. Department of Energy defense-related funding reductions;

(b) Federally-Declared Disasters;

(c) International trade;

(d) Long-term economic deterioration;

(e) Loss of a major community employer; or

(f) Loss of manufacturing jobs.

§ 307.2 Criteria for Economic Adjustment Assistance Investments.

(a) Economic Adjustment Assistance Investments are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help develop and implement a CEDS;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the CEDS;

(4) Enable communities to plan and coordinate the use of Federal resources and other resources available to support economic recovery, development of Regional economies, or recovery from natural or other disasters; or

(5) Encourage the development of innovative public and private approaches to economic restructuring and revitalization.

(b) Economic Adjustment Assistance Investments may be made when the Project funded by the Investment will help the Region meet a Special Need. The Region in which a Project is located must have a CEDS with which the Project is consistent (except that this requirement shall not apply to Strategy Grants described in § 307.3).

§ 307.3 Use of Economic Adjustment Assistance Investments.

Economic Adjustment Assistance Investments may be used to develop a CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation (a *''Strategy Grant''*), or to fund a Project implementing such a CEDS (an *''Implementation Grant''*).

(a) Strategy Grants support developing, updating or refining a CEDS.

(b) Implementation Grants support the execution of activities identified in a CEDS. Specific activities may be funded as separate Investments or as multiple elements of a single Investment. Examples of Implementation Grant activities include:

(1) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Provision of business or infrastructure financing through the capitalization of Recipient-administered Revolving Loan Funds (*''RLFs''*), which may include loans, loan guaranties and interest rate buy-downs to facilitate business lending activities;

(3) Market or industry research and analysis;

(4) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(5) Public services;

(6) Training; and

(7) Other activities justified by the CEDS that satisfy applicable statutory and regulatory requirements.

§ 307.4 Award requirements.

(a) *General.* EDA will select Economic Adjustment Assistance Projects in accordance with part 301 of this chapter and the additional criteria provided in paragraphs (b) and (c) of this section, as applicable.

(b) *Strategy Grants.* EDA will review Strategy Grant proposals to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter.

(c) *Implementation Grants.*

(1) EDA will review Implementation Grant proposals for the extent to which:

(i) The applicable CEDS meets the requirements in § 303.7 of this chapter; and

(ii) The proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) *Revolving Loan Fund Grants.* For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review the proposals for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

(d) Funding priority considerations for Economic Adjustment Assistance may be set forth in an FFO.

§ 307.5 Application requirements.

(a) Each application for Economic Adjustment Assistance must:

(1) Include or incorporate by reference (if so approved by EDA) a CEDS, except that a CEDS is not required when applying for a Strategy Grant; and

(2) Explain how the proposed Project meets the criteria set forth in § 307.2.

(b) For a technical assistance Project of significant Regional or national scope under this subpart, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

§ 307.6 Economic Adjustment Assistance post-approval requirements.

In addition to the post-approval requirements set forth in § 302.18 of this chapter:

(a) Strategy Grants shall comply with the applicable provisions of part 303 of this chapter;

(b) Implementation Grants involving construction shall comply with the provisions of subpart B of part 305 of this chapter;

(c) Implementation Grants not involving construction shall comply with the applicable provisions of subpart A of part 306 of this chapter; and

(d) RLF Grants shall comply with the requirements set forth in this part and in the following publications:

(1) EDA's RLF Standard Terms and Conditions; and

(2) The compliance supplement to OMB Circular A–133 (the *''Compliance Supplement''*). The Compliance Supplement is available via the Internet at *http://www.omb.gov.*

Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds

§ 307.7 Revolving Loan Funds established for business lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but may also fund public infrastructure or other authorized lending activities. The requirements in this subpart B apply to RLFs established for business lending activities. Special award conditions may contain appropriate modifications of these requirements to accommodate non-business RLF awards.

§ 307.8 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Closed Loan means any loan for which all required documentation has been, received, reviewed and executed by an RLF Recipient.

Exempt Security means a Security that is not subject to certain SEC or Federal Reserve Board rules.

Guaranteed Loan means a loan made and serviced by a third party lending institution under a loan guaranty agreement providing that an RLF Recipient will purchase the guaranteed portion of the loan in the event of borrower default.

Prudent Lending Practices means generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests. Prudent Lending Practices include loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection and recovery actions. Prudent Lending Practices provide for compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

Recapitalization Grants are Investments of additional Grant funds to increase the capital base of an RLF.

Revolving Phase means that stage of the RLF's business lending activities that commences immediately after all Grant funds have been disbursed to the RLF Recipient.

RLF Capital means, at any point in time, the aggregate amount of cash held by the RLF Recipient from any of the following sources: Grant funds; Local Share; repayments of principal from RLF loans; and RLF Income. The initial RLF capital base is normally comprised of EDA funds and the cash Local Share.

RLF Income means interest earned on outstanding loan principal and RLF accounts holding RLF funds (excluding interest earned on excess funds pursuant to § 307.16(c)(2)), all fees and charges received by the RLF, and other income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to § 307.16(c)(2)(i).

RLF Third Party, for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for proposals or Cooperative Agreement to facilitate and/or manage the intended liquidation of an RLF.

Sale means an EDA-approved sale by an RLF Recipient of its RLF loan portfolio (or a portion thereof) to a third party. A third party may participate in a subsequent Securitization offered in a secondary market transaction and collateralized by the underlying RLF loan portfolio (or a portion thereof).

SEC or the *Commission* means the U.S. Securities and Exchange Commission.

Securitization refers to the financing technique of securing an investment of new capital with a stream of income generated by aggregating similar instruments such as loans or mortgages into a new transferable Security.

Security means any investment instrument issued by a corporation, government or other organization which offers evidence of debt or equity.

§ 307.9 Revolving Loan Fund Plan.

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the ''*RLF Plan*'' or ''*Plan*'') as described in this section. The Plan shall be submitted to and approved by EDA.

(a) *Format and content.*

(1) Part I of the Plan titled ''Revolving Loan Fund Strategy'' shall summarize the CEDS and business development objectives and shall describe the RLF's financing strategy, policy and portfolio standards.

(2) Part II of the Plan titled ''Operational Procedures'' shall serve as the internal operating manual for the RLF Recipient. The administrative procedures for operating the RLF must be consistent with Prudent Lending Practices.

(b) *Evaluation of RLF Plans.* EDA will use the following criteria in evaluating Plans:

(1) The Plan must be consistent with the CEDS or EDA-approved strategy for the Region;

(2) The Plan must identify the strategic purpose of the RLF and must describe the selection of the financing strategy and lending criteria, including:

(i) An analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards that are consistent with EDA policies and requirements; and

(3) The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It shall also provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with Federal and local laws.

(c) *Modification of RLF Plans.* An RLF Recipient must request and obtain EDA approval prior to any modification of the Plan.

§ 307.10 Pre-loan requirements.

(a) RLF Recipients must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for compliance with applicable environmental laws and other regulations, including but not limited to parts 302 and 314 of this chapter. The RLF Recipient must also adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

(b) RLF Recipients must ensure that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements shall include applicable Federal requirements to ensure compliance and RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

(c) All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an RLF Grant to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the RLF Recipient or any of its borrowers, predecessors or successors.

§ 307.11 Disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.* Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA:

(1) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the duration of the RLF's operation; and

(2) Evidence of certification in accordance with § 307.15(b)(1).

(b) *Timing of request for disbursements.* An RLF Recipient shall request disbursements of Grant funds only to close a loan or disburse RLF funds to a borrower. The RLF Recipient must disburse the RLF funds to a borrower within thirty (30) days of receipt of the Grant funds. Any Grant funds not disbursed within the thirty (30) day period shall be refunded to EDA pursuant to paragraph (e) of this section.

(c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall not exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with the Grant funds. However, RLF Income held to reimburse eligible administrative costs need not be disbursed in order to draw additional Grant funds.

(d) *EDA funds account.* The RLF Recipient shall establish and maintain an interest-bearing account designated as the ''EDA funds account,'' indicating that monies deposited therein are held for funding approved Closed Loans. The RLF Recipient shall withdraw funds or order a transfer from the EDA funds account for lending to eligible borrowers or return of funds to EDA.

(e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond thirty (30) days, the RLF Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA. Grant funds returned to EDA shall be available to the RLF Recipient for future draw-downs. When returning prematurely drawn Grant funds, the RLF Recipient must clearly identify on the face of the check or in the written notification to the applicable grants officer ''EDA,'' the Grant award number, the words ''Premature Draw,'' and a brief description of the reason for returning the Grant funds.

(f) *Local Share.*

(1) Cash Local Share of the RLF may only be used for lending purposes. The cash Local Share must be used either in proportion to the Grant funds or at a faster rate than the Grant funds.

(2) When an RLF has a combination of In-Kind Contributions and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last twenty (20) percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

§ 307.12 Revolving Loan Fund Income.

(a) *General requirements.* RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income and the administrative costs are incurred in the same twelve-month (12) reporting period;

(2) RLF Income that is not used for administrative costs during the twelve-month (12) reporting period is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent reporting period for any purpose other than lending without the prior written consent of EDA; and

(4) The RLF Recipient completes an RLF Income and Expense Statement (the ''*Income and Expense Statement*'') as required under § 307.14(c).

(b) *Compliance guidelines.* When charging costs against RLF Income, RLF Recipients must comply with applicable OMB cost principles and RLF audit guidelines as found in:

(1) OMB Circular A–87 for State, local, and Indian tribal governments, OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such circular, and OMB Circular A–21 for educational institutions; and

(2) OMB Circular A–133 for Single Audit Act requirements for States, local governments, and non-profit organizations and the Compliance Supplement, as appropriate.

(c) *Priority of payments on defaulted RLF loans.* When an RLF Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20, such proceeds shall be applied in the following order of priority:

(1) *First,* towards any costs of collection;

(2) *Second,* towards outstanding penalties and fees;

(3) *Third*, towards any accrued interest to the extent due and payable; and

(4) *Fourth*, towards any outstanding principal balance.

§ 307.13 Records and retention.

(a) *Closed Loan files and related documents.* The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year (3) period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

(b) *Administrative records.* RLF Recipients must at all times:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual or annual report that covers the period that such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less.

(3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

§ 307.14 Revolving Loan Fund semi-annual and annual reports.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must submit semi-annual reports. EDA may approve the substitution of annual reports for semi-annual reports upon written request by the Recipient if the following conditions have been met:

(1) At least one (1) year has passed from the date that the RLF has loaned an aggregate amount equal to its initial RLF Capital base;

(2) The RLF Recipient has timely submitted accurate semi-annual reports for the preceding two (2) years;

(3) The RLF Recipient has ensured completion and submission to EDA of required periodic audits for the most recent audit period within the preceding two (2) years; and

(4) EDA determines that the RLF is in compliance with all applicable RLF requirements.

(b) *Report contents.* RLF Recipients must certify as part of the semi-annual or annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients must also describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF Income and Expense Statement.*

(1) An RLF Recipient using either fifty (50) percent or more (or more than $100,000) of RLF Income for administrative costs in the twelve-month (12) reporting period must submit a completed Income and Expense Statement annually to the appropriate regional office within ninety (90) days of the end of its fiscal year. An RLF Recipient using less than fifty (50) percent and less than $100,000 of RLF Income for administrative costs in the twelve-month (12) reporting period must prepare and retain for four (4) years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request.

(2) *Performance measures.* As part of the semi-annual or annual report, RLF Recipients shall submit to EDA the information identified as the ''Core Performance Measures'' in the special award conditions of the Grant documents. EDA will advise RLF Recipients within a reasonable time of any required modifications to the information submitted.

§ 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.*

(1) RLFs shall operate in accordance with generally accepted accounting principles (''*GAAP*'') as in effect from time to time in the United States and the provisions outlined in OMB Circular A–133 and the Compliance Supplement, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the fair market value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries.

(b) *Loan and accounting system documents.*

(1) Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the RLF Recipient's accounting system shall certify to EDA and the RLF Recipient that such system is adequate to identify, safeguard and account for all RLF Capital, outstanding RLF loans and other RLF operations.

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law. The standard loan documents must include, at a minimum, the following:

(i) Loan application;

(ii) Loan agreement;

(iii) Promissory note;

(iv) Security agreement(s);

(v) Deed of trust or mortgage (as applicable);

(vi) Agreement of prior lien holder (as applicable); and

(vii) Guaranty agreement (as applicable).

(c) *Interest rates.* An RLF Recipient may make loans and may guarantee loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than four (4) percent.

However, should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

(d) *Private leveraging.* (1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months prior to approval of an RLF loan, as part of the same business development Project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

(iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

(2) Private investments shall not include accrued equity in a borrower's assets.

§ 307.16 Effective utilization of Revolving Loan Funds.

(a) *Loan closing and disbursement schedule.*

(1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three (3) years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within forty-five (45) days of the deadline;

(ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or

(iii) EDA has approved a time schedule extension pursuant to § 307.16(b).

(b) *Time schedule extensions.*

(1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension requests by demonstrating that:

(i) The delay was unforeseen or beyond the control of the RLF Recipient;

(ii) The financial need for the RLF still exists;

(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension and in the event an extension is denied, EDA may deobligate all or part of the unused Grant funds and terminate the Grant.

(c) *Capital utilization standard.*

(1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of $4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the applicable capital utilization percentage is referred to as ''excess funds.''

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account separate from the EDA funds account. The portion of interest earned on the account holding excess funds attributable to the RLF Grant shall be remitted to the U.S. Treasury. RLF Recipients must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if an RLF Recipient fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

§ 307.17 Uses of capital.

(a) *General.* RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Restrictions on use of RLF Capital.* RLF Capital shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a ''*sound economic justification*'' for the refinancing (*e.g.*, the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within eighteen

(18) months following the date of refinancing;

(c) *Credit not otherwise available.* RLF Recipients must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

(d) *Use of In-Kind Contributions.* In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and provisions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

(e) *Loan guaranty agreements.* Prior to the full disbursement of Grant funds, the RLF Recipient shall not use RLF Capital to guarantee loans made by other lending institutions. After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the RLF Recipient has obtained prior written approval from EDA of its proposed loan guaranty activities and submitted to EDA:

(1) The maximum guaranty percentage offered by the RLF Recipient and accepted by the lender;

(2) The loan guaranty agreement which must (at a minimum) document:

(i) The RLF Recipient's maximum liability;

(ii) The respective rights, representations and obligations of the RLF Recipient and lender with regard to collection procedures, servicing requirements, borrower delinquency, events of defaults and termination of the loan guaranty agreement;

(iii) The responsible party's obligations in the event of any foreclosure, bankruptcy or insolvency proceeding;

(iv) The responsible party's obligations with respect to collateral disposition and the call provisions for the Guaranteed Loan; and

(v) The distribution of interest income and loan fees, if any, to the RLF; and

(3) Certification from the RLF Recipient's legal counsel that the loan guaranty agreement is valid and enforceable under applicable State law; and

(4) An amended RLF Plan accommodating the loan guaranty activities approved by EDA (as necessary).

§ 307.18 Addition of lending areas; merger of RLFs.

(a)(1) *Addition of Lending Areas.* An RLF Recipient shall make loans to implement and assist economic activity only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the Plan. An RLF Recipient may add an additional lending area (an ''*Additional Lending Area*'') to its existing lending area to create a new merged lending area (the ''*New Lending Area*'') only with EDA's prior written approval and subject to the following provisions and conditions:

(i) EDA shall have disbursed the full amount of its Investment Assistance to the RLF Recipient;

(ii) The Additional Lending Area must fulfill the economic distress criteria for Economic Adjustment Investments under this part and in accordance with § 301.3(a) of this chapter;

(iii) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) The RLF Recipient must demonstrate that the Additional Lending Area is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, in accordance with § 307.9(b)(1);

(v) The RLF Recipient shall modify its Plan to incorporate the Additional Lending Area and revise its lending strategy, as necessary;

(vi) The RLF Recipient shall execute an amended RLF Grant award agreement, as necessary; and

(vii) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) The New Lending Area designation shall remain in place indefinitely following EDA approval.

(b) *Merger of RLFs.*

(1) *Single RLF Recipient.* An RLF Recipient with more than one (1) EDA-funded RLF Grant may consolidate two (2) or more EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval and provided:

(i) It meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 307.14;

(ii) It demonstrates a rational basis for undertaking the merger (for example, the lending area(s) and borrower criteria identified in different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated);

(iii) It amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iv) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter; and

(v) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) *Multiple RLF Recipients.* Two (2) or more RLF Recipients may consolidate their EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval and provided:

(i) The surviving RLF Recipient meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 307.14;

(ii) The surviving RLF Recipient amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iii) Prior to EDA's disbursement of additional funds to the surviving RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;

(v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipient as of the merger's effective date; and

(vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

§ 307.19 RLF loan portfolio Sales and Securitizations.

EDA may take such actions as appropriate to enable an RLF Recipient to sell or securitize RLF loans, except that EDA may not issue a Federal guaranty covering any issued Security. With prior approval from EDA, an RLF Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided:

(a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;

(b) An RLF Recipient must request EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized;

(c) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the ''*Exchange Act*''), unless exempted by a rule or regulation issued by the Commission; and

(d) Except as provided in paragraph (c), no provision of this section supersedes or otherwise affects the application of the ''securities laws'' (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

§ 307.20 Partial liquidation and liquidation upon termination.

(a) *Partial liquidation.* EDA may require an RLF Recipient to transfer any RLF loans that are more than one hundred and twenty (120) days delinquent to an RLF Third Party for liquidation.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one (1) or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(d) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(1) *First,* for any third party liquidation costs;

(2) *Second,* for the payment of EDA's Federal Share (as defined in § 314.5 of this chapter); and

(3) *Third,* if any proceeds remain, to the RLF Recipient.

§ 307.21 Termination of Revolving Loan Funds.

(a) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the following reasons:

(1) Failure to operate the RLF in accordance with the Plan, the RLF Grant or this part;

(2) Failure to obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(3) Failure to submit timely progress, financial and audit reports as required by the RLF Grant and § 307.14; and

(4) Failure to comply with the conflicts of interest provisions set forth in § 302.17.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

§ 307.22 Variances.

EDA may approve variances to the requirements contained in this subpart, provided such variances:

(a) Are consistent with the goals of the Economic Adjustment Assistance program and with an RLF Plan;

(b) Are necessary and reasonable for the effective implementation of the RLF;

(c) Are economically and financially sound; and

(d) Do not conflict with any applicable legal requirements, including Federal, State and local law.

PART 308—PERFORMANCE INCENTIVES

Sec.

308.1 Use of funds in Projects constructed under projected cost.
308.2 Performance awards.
308.3 Planning performance awards.

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

§ 308.1 Use of funds in Projects constructed under projected cost.

(a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:

(1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or

(2) Further improve the Project consistent with its purpose.

(b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.

(c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

§ 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount not to exceed ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the proposal evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A Recipient may receive a performance award no later than three (3) years following the Project's closeout.

(d) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-Federal funds.

(e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during

the applicable fiscal year, with all performance awards being subject to the availability of funds.

§ 308.3 Planning performance awards.

(a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA located in an EDA-funded Economic Development District may receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines no later than three (3) years following closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the economic development activities of the District;

(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with Federal, State and local economic development entities throughout the development of the Project.

(b) The Recipient shall use the planning performance award to increase, up to one hundred (100) percent, the Federal share of the cost of a Project under this chapter.

(c) The applicable FFO may set forth additional requirements, qualifications and guidelines for planning performance awards.

PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

Sec.
309.1 Redistributions under parts 303, 305 and 306.
309.2 Redistributions under part 307.

Authority: 42 U.S.C. 3154c; 42 U.S.C. 3211; Department of Commerce Delegation Order 10–4.

§ 309.1 Redistributions under parts 303, 305 and 306.

(a) *General.* Except as provided in paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

(b) *Exception.* A Recipient may not make a subgrant of Investment Assistance received under parts 303 or 305 of this chapter to a for-profit entity.

§ 309.2 Redistributions under part 307.

(a) A Recipient of Investment Assistance under part 307 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of:

(1) A subgrant to another Eligible Recipient that qualifies for Investment Assistance under part 307 of this chapter; or

(2) Pursuant to part 307, subpart B, a loan or other appropriate assistance to non-profit and private for-profit entities.

(b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

PART 310—SPECIAL IMPACT AREAS

Sec.
310.1 Special Impact Area.
310.2 Pressing need; alleviation of unemployment or underemployment.

Authority: 42 U.S.C. 3154; Department of Commerce Organization Order 10–4.

§ 310.1 Special Impact Area.

Upon the application of an Eligible Recipient, and with respect to that Eligible Recipient's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Recipient demonstrates that its proposed Project will:

(a) Directly fulfill a pressing need and

(b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

§ 310.2 Pressing need; alleviation of unemployment or underemployment.

(a) The Assistant Secretary may find a pressing need to exist if the Region which the Project will serve:

(1) Has a unique or urgent circumstance that would necessitate waiver of the CEDS requirements of § 303.7 of this chapter;

(2) Involves a Project undertaken by an Indian Tribe;

(3) Is rural and severely distressed;

(4) Is undergoing a transition in its economic base as a result of changing trade patterns (*e.g.*, the Region is certified as eligible by the North American Development Bank Program or the Community Adjustment and Investment Program);

(5) Exhibits a substantial reliance on a natural resource for its economic well-being;

(6) Has been designated as a Federally-Declared Disaster area; or

(7) Has a Special Need.

(b) For purposes of this part, excessive unemployment exists if the twenty-four (24) month unemployment rate is at least 225% of the national average or the per capita income is not more than 50% of the national average. A Region demonstrates excessive underemployment if the employment of a substantial percentage of workers in the Region is less than full-time or at less skilled tasks than their training or abilities would otherwise permit. Eligible Recipients seeking a Special Impact Area designation under this criterion must present appropriate and compelling economic and demographic data.

(c) Eligible Recipients may demonstrate the provision of useful employment opportunities by quantifying and evidencing the Project's prospective:

(1) Creation of jobs;

(2) Commitment of financial investment by private entities; or

(3) Application of innovative technology that will lead to the creation of jobs or the commitment of financial investment by private entities.

PART 311 [RESERVED]

PART 312 [RESERVED]

PART 313 [RESERVED]

PART 314—PROPERTY

Subpart A—General

Sec.
314.1 Definitions.
314.2 Federal Interest.
314.3 Authorized use of Property.
314.4 Unauthorized Use of Property.
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Subpart D—Release of EDA's Property Interest

314.10 Procedures for release of EDA's Property interest.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 314.1 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms shall have the following meanings:

Adequate Consideration means the fair market value at the time of sale or lease of any Property, as adjusted, in EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.

Disposition or *Dispose* means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.

Estimated Useful Life, as used in this part, means the period of years that constitutes the expected useful lifespan of a Project, as determined by EDA, during which EDA anticipates obtaining the economic development benefits of its Investment.

Federal Interest has the definition ascribed to it in § 314.2(a).

Federal Share has the definition ascribed to it in § 314.5.

Owner means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.

Personal Property means all tangible and intangible property other than Real Property.

Property means Real Property, Personal Property and mixed property.

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is improved by the construction of Project infrastructure such as, but not limited to, roads, sewers and water lines that are not situated on or under the land, where the infrastructure contributes to the value of such land as a specific purpose of the Project.

Successor Recipient means an EDA-approved transferee of Property pursuant to § 314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.

Unauthorized Use means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in § 314.4.

§ 314.2 Federal Interest.

(a) Property that is acquired or improved, in whole or in part, with Investment Assistance shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the ''Federal Interest''). The Federal Interest secures compliance with matters such as the purpose, scope and use of a Project and is often reflected by a recorded lien, statement or other recordable instrument setting forth EDA's Property interest in a Project (*e.g.,* a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction or improvement of a building. *See* § 314.8.)

(b) When the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

§ 314.3 Authorized Use of Property.

(a) The Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for the authorized purpose of the Project and such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements including but not limited to nondiscrimination and environmental compliance.

(d) EDA, in its sole discretion, may approve the transfer of any Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.

(e) When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property; provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(f) With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made; provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at *http://www.eda.gov*) for guidelines on obtaining approval for incidental use of Property under this section.

§ 314.4 Unauthorized Use of Property.

(a) Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's interest in certain Property), or as otherwise authorized by EDA, the Federal government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved in whole or in part with Investment Assistance is Disposed of, encumbered, or no longer

used for the purpose of the Project; provided that for equipment and supplies, the requirements at 15 CFR parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply.

(b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance may not be used:

(1) In violation of the nondiscrimination requirements of § 302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or

(2) For any purpose prohibited by applicable law.

(c) Where the Disposition, encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§ 302.3 and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use or Disposition of the Property.

§ 314.5 Federal Share.

For purposes of this part, ''*Federal Share*'' means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) attributable to EDA's participation in the Project. The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are $100, consisting of $50 of Investment Assistance and $50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is $250, the Federal Share is $125 (*i.e.,* fifty (50) percent of $250). If $10 is spent to put the Property into salable condition, the Federal Share is $120 (*i.e.,* fifty (50) percent of ($250–$10)).

§ 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project. An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) Recipient-owned Property that is subject to an encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met;

(2) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities; and

(3) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies or for related activities of which the Project is an essential part;

(iii) A grantor/lender will not provide funds without the security of a lien on the Property; and

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

Subpart B—Real Property

§ 314.7 Title.

(a) *General.* The Recipient must hold title to the Real Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient must also furnish evidence, satisfactory in form and substance to EDA, that title to Real Property required for a Project (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b)(1) The Recipient must disclose to EDA all encumbrances, including but not limited to the following:

(i) Liens;

(ii) Mortgages;

(iii) Reservations;

(iv) Reversionary interests; and

(v) Other restrictions on title or on the Recipient's interest in the Property.

(2) No encumbrance will be acceptable if, as determined by EDA, the encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to the Real Property required for a Project.

(1) Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Real Property will be acceptable for purposes of paragraph (a) of this section if:

(i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal government's interest in the Real Property.

(2) EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project will be acceptable for purposes of paragraph (a) of this section if:

(i) Fee title to the Real Property is not otherwise obtainable; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government's interest in the Real Property.

(3) When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the Project, if required by the railroad; and provided

that, the construction is a minor but essential component of the Project.

(4) When a Project includes construction on a State-owned or local government-owned highway (*i.e.*, where the Recipient is not the State or local government owner), EDA may find it acceptable for the State or local government to own, operate and maintain that portion of the Project, if required by the State or local government; provided that, construction is a minor but essential component of the Project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA that the:

(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;

(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and

(iii) Use of the Property will be consistent with the authorized purposes of the Project.

(5)(i) When an authorized purpose of the Project is to construct facilities to serve Real Property owned by the Recipient, including but not limited to industrial or commercial parks, for sale or lease to private parties, such sale or lease is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;

(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient completes the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient agrees that a violation of this paragraph by the Recipient, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition the sale or lease on the satisfaction by the Recipient, purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of the sale or lease.

(6)(i) When an authorized purpose of the Project is to construct facilities to serve privately-owned Real Property, including but not limited to industrial or commercial parks, the ownership, sale or lease of such Real Property is permitted so long as:

(A) The Owner provides evidence sufficient to EDA that it holds title to the Real Property improved or benefited by the EDA Investment Assistance prior to the disbursement of any portion of the Investment Assistance and will retain title to the Real Property for the entire Estimated Useful Life of the Property or until the sale of such Real Property;

(B) The Recipient and the Owner agree to use Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project;

(C) The Recipient must provide adequate assurances that the Owner will complete the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient further agrees that a violation of this paragraph by the Owner, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition its Investment Assistance on the satisfaction by the Recipient, Owner or by the purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of a sale or lease.

§ 314.8 Recorded statement.

(a) For all Projects involving the acquisition, construction or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant or other statement of EDA's interest in the Property acquired or improved in whole or in part with the EDA Investment Assistance. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Real Property is located, all in accordance with applicable law.

(c) Facilities in which the EDA Investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement—title.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the Recipient shall execute a security interest or other statement of EDA's interest in the Personal Property, acceptable in form

and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to the Personal Property acquired or improved as part of the Project, except as otherwise provided in this part.

Subpart D—Release of EDA's Property Interest

§ 314.10 Procedures for release of EDA's Property interest.

(a) *General.* Upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, EDA may release any Real Property or tangible Personal Property interest held by EDA, in connection with Investment Assistance after the date that is twenty (20) years after the date on which the Investment Assistance was awarded.

(b) *Exception.* EDA releases all of its Real Property and tangible Personal Property interests in Projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94–369), as amended by the Public Works Employment Act of 1977 (Pub. L. 95–28).

(c)(1) *Unauthorized Use.* Notwithstanding the release of EDA's interest pursuant to paragraphs (a) or (b) of this section, Real Property or tangible Personal Property acquired or improved with Investment Assistance may not be used:

(i) In violation of the nondiscrimination requirements set forth in § 302.20 of this chapter; or

(ii) For inherently religious activities prohibited by applicable Federal law.

(2) Violation of this paragraph (c) constitutes an Unauthorized Use of the Real Property or of the tangible Personal Property.

(d) *Release.*

(1) Except as provided in paragraph (b) of this section, the release of EDA's interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause, as determined in EDA's sole discretion. In addition to the restrictions set forth in paragraph (c) of this section, the release may be conditioned upon some activity of the Recipient intended to be pursued as a consequence of the release.

(2) When requesting a release of EDA's interest pursuant to paragraph (a) of this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for inherently religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with § 314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. *See* § 314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property:

(A) For inherently religious activities in violation of applicable Federal law; and

(B) For any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

(ii) EDA may require a Recipient (or its successors in interest) who intends or foresees the use of Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest to compensate EDA for the Federal Share of such Property. EDA recommends that a Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for inherently religious activities to contact EDA well in advance of requesting a release pursuant to this section.

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

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315.17 Assistance to Firms in import-impacted industries.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341 *et seq.*; Department of Commerce Organization Order 10–4.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 3 of title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Adjustment Assistance means technical assistance provided to Firms or industries under chapter 3 of title II of the Trade Act.

Adjustment Proposal means a Certified Firm's plan for improving its economic situation.

Certified Firm means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

Confidential Business Information means any information submitted to EDA or a TAAC by a Firm that concerns or relates to trade secrets for commercial or financial purposes, which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Contributed Importantly, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be considered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five (5) percent relative to its sales or production during the applicable prior time period, and:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm.

Directly Competitive means:

(1) Articles which are substantially equivalent for commercial purposes (*i.e.*, are adapted to the same function or use and are essentially interchangeable); and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms, may be considered a single Firm when they produce like or Directly Competitive articles or are exerting essential economic control over one or more production facilities. Such other Firms include:

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a ''Predecessor'') and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company.

Increase in Imports means an increase of imports of Directly Competitive or Like Articles with articles produced by such Firm that Contributed Importantly to the applicable Total or Partial Separation or threat thereof, and to the applicable decline in sales or production.

Like Articles means any articles which are substantially identical in their intrinsic characteristics.

Partial Separation means, with respect to any employment in a Firm, either:

(1) A reduction in an employee's work hours to eighty (80) percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to eighty (80) percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means an individual, organization or group.

Record means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

Significant Number or Proportion of Workers means five (5) percent of a Firm's work force or fifty (50) workers, whichever is less. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

Substantial Interest means a direct material economic interest in the certification or non-certification of the petitioner.

TAAC means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

Threat of Total or Partial Separation means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

Total Separation means, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

§ 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

§ 315.4 Eligible petitioners.

Eligible petitioners for assistance under this part shall be:

(a) Trade Adjustment Assistance Centers (''*TAACs*''). A TAAC can be a(n):

(1) University affiliate;

(2) State or local government affiliate; or

(3) Non-profit organization.

(b) Firms; or

(c) Organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 or 251 of the Trade Act, including:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.*

(1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all fifty (50) U.S. States, the District of Columbia and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas may be obtained from the TAAC Web site at *http://www.taacenters.org* or from EDA. *See* the applicable FFO for the appropriate points of contact and addresses.

(2) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will normally be made through TAACs.

(3) TAACs generally provide Adjustment Assistance to a Firm by providing the following:

(i) Assistance to a Firm in preparing its petition for certification;

(ii) Assistance to a Certified Firm in diagnosing its strengths and weaknesses and developing its Adjustment Proposal; and

(iii) Assistance to a Certified Firm in the implementation of its Adjustment Proposal.

(b) *TAAC selection.*

(1) EDA invites currently funded TAACs to submit either new or amended applications; provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not assure funding by EDA.

(2) EDA may invite new TAAC proposals through an FFO. If such a proposal is acceptable, EDA will invite an application on a form approved by OMB. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(c) *TAAC evaluation.*

(1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

(ii) Proposed scope of work, budget and application or amended application; and

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

(iii) Proposed scope of work, budget and application; and

(iv) Availability of funding.

(d) *TAAC award requirements.*

(1) EDA generally funds TAACs for twelve (12) months.

(2) There are no Matching Share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

§ 315.6 Firm eligibility for Adjustment Assistance.

(a) Firms participate in the Trade Adjustment Assistance for Firms program in accordance with the following:

(1) Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions (at no cost to the Firms);

(2) Firms certified in accordance with the procedures described in §§ 315.7 and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC, and submit it to EDA for approval; and

(3) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part. A Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal.

(b) For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) (1) Firms generally receive Adjustment Assistance over a two-year (2) period.

(2) Matching Share requirements are as follows:

(i) Each Firm must pay at least twenty-five (25) percent of the cost of the preparation of its Adjustment Proposal. Each Firm requesting $30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least twenty-five (25) percent of the cost of that Adjustment Assistance. Each Firm requesting more than $30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least fifty (50) percent of the cost of that Adjustment Assistance.

(ii) Organizations representing trade-injured industries must pay at least fifty (50) percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

Subpart B—Certification of Firms

§ 315.7 Certification requirements.

(a) EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act if it determines that the petition for certification meets one of the requirements set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the three (3) circumstances in paragraph (b) of this section.

(b)(1) *Twelve-month (12) decline.* Based upon a comparison of the most recent twelve-month (12) period for which data are available and the immediately preceding twelve-month (12) period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production of the Firm has Decreased Absolutely; or sales or production, or both, of any article that accounted for not less than twenty-five (25) percent of the total production or sales of the Firm during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has occurred; or

(2) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has occurred; or

(3) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available; and

(iii) An Increase in Imports has occurred.

§ 315.8 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (Form ED–840P or any successor form) with the following information about such Firm:

(1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company,

Subsidiaries or Affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported Directly Competitive or Like Articles with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) One (1) copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one (1) copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition; publicly-owned corporations should submit copies of the most recent Form 10–K annual reports (or Form 10–Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;

(6) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register.**

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.7.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all material. In no event may the determination period exceed sixty (60) days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner or any parties as specified in § 315.10(d) of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one (1) year from the date of denial, provided, EDA may waive the one-year (1) limitation for good cause.

§ 315.9 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner, or any person, organization, or group found by EDA to have a Substantial Interest in the proceedings, submits a request for a hearing no later than ten (10) days after the date of publication of the Notice of Acceptance in the **Federal Register,** under the following procedures:

(a) The petitioner and other interested Persons shall have an opportunity to be present, to produce evidence and to be heard;

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(d) EDA shall publish a notice of a public hearing in the **Federal Register,** containing the subject matter, name of petitioner, and date, time and place of the hearing; and

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§ 315.10 Loss of certification benefits.

A Firm may fail to obtain benefits of certification, regardless of whether its certification is terminated, for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two (2) years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year (2) period, a Firm must submit an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six (6) months after approval of the Adjustment Proposal, where two (2) years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two (2) years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved Adjustment Proposal where two (2) years have elapsed since the date of certification.

§ 315.11 Appeals, final determinations and termination of certification.

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within sixty (60) days from the date of notice of denial under § 315.8(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph, the determination under § 315.8(g) shall be final.

(b) A Firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within sixty (60) days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with section 284 of the Trade Act.

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register.** The termination will take effect on the date specified in the published notice.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart C—Protective Provisions

§ 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance program funds so as to facilitate an effective audit.

§ 315.13 Audit and examination.

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

§ 315.14 Certifications.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors or officers thereof certify:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

(b) The fees paid or to be paid to any such Person.

§ 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two (2) years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one (1) year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart D—Adjustment Proposals

§ 315.16 Adjustment Proposal Requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) EDA must receive the Adjustment Proposal within two (2) years after the date of the certification of the Firm;

(b) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal, including financial and other supporting documentation as EDA determines is necessary, based upon either:

(1) An analysis of the Firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(2) If EDA so determines, other available information;

(c) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.,* that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

(ii) Make efforts to find new work for a number of such workers; and

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and

(d) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For this purpose, Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

Subpart E—Assistance to Industries

§ 315.17 Assistance to Firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to $10,000,000 annually per industry, subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.

Dated: September 19, 2006.

Benjamin Erulkar,

Deputy Assistant Secretary and Chief Operating Officer, Economic Development Administration.

[FR Doc. 06–8035 Filed 9–26–06; 8:45 am]

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Wednesday,
September 27, 2006

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AB10

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Provisions

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends a number of existing provisions in the WIC Program regulations to address issues raised by WIC State agencies, other members of the WIC community, and the United States Government Accountability Office (GAO). This final rule also incorporates recent legislation and certain longstanding program policies and State agency practices into the regulations. Further, the final rule also streamlines certain requirements in the regulations.

In particular, this rulemaking streamlines the Federal requirements for financial and participation reporting by State agencies, and clarifies the requirements pertaining to the confidentiality of WIC information in order to strengthen coordination with public organizations and private physicians. It also incorporates recent legislation which provided the WIC State agencies with the option to extend the certification period for breastfeeding women. Further, it incorporates longstanding program policies and State agency practices into the regulations regarding State agency responses to subpoenas and other court-ordered requests for confidential information. Other provisions in this final rule are designed to improve eligibility determinations, incorporating program policies and State agency practices that have been in effect for some time.

These changes are intended to reinforce program policies and State agency practices that strengthen services to WIC participants, improve Program administration, and increase State agency flexibility in managing the Program. Many of these provisions are options the State agency may choose to implement in operating the program.

DATES: *Effective Date:* This rule is effective November 27, 2006.

Implementation Date: State agencies must implement the provisions of this rule no later than March 27, 2007.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Economic Impact Analysis was developed for this final rule. A complete copy of the Impact Analysis appears in the appendix to this rule. The conclusions of this analysis are summarized below.

Need for Action

This action is needed to address issues raised by WIC State agencies and other members of the WIC community; address issues raised by the GAO; incorporate recent legislation; incorporate certain longstanding program policies and State agency practices into the regulations; and, streamline certain requirements in the regulations.

Two provisions in this final rule may have a notable financial impact. One of these provisions prohibits the use of possibility of regression to a previous nutrition risk as the basis for determining nutrition risk eligibility in consecutive certifications when this nutrition risk is not actually present.

The second provision which may have a notable financial impact provides WIC States agencies with the option to extend the certification period for all participant categories until the end of the last month of the certification period, and also provides the option to extend a breastfeeding woman's certification period up to her infant's first birthday or until the woman ceases to breastfeed. This provision incorporates recent legislation. Section 203(b)(1) of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, amended section 17(d)(3) of the Child Nutrition Act of 1966, 42 U.S.C. 1786, to allow WIC State agencies the option to certify a breastfeeding woman for up to one year postpartum, or until the woman stops breastfeeding, whichever occurs first. This option became effective on October 1, 2004, pursuant to Section 502(b)(2) of Public Law 108–265.

Benefits

This rule serves to streamline program administration and clarify program requirements, while minimizing economic and administrative burdens. As previously noted, one of this rule's provisions which may have a notable financial impact prohibits the use of the possibility of regression to a previous nutrition risk as the basis for determining nutrition risk eligibility in consecutive certifications when this nutrition risk is not actually present.

For example, this provision would permit use of the possibility of regression to anemia as the nutrition risk for a certification following a certification when anemia was actually present, but not for any subsequent certification. If all of the participants certified based on the possibility of regression as a nutrition risk criterion in 2004 were subsequently certified on this basis for one six-month certification period, then prohibiting use of this nutrition risk for consecutive certifications could save over $20 million and reduce participation by over 70,000 in that six-month period. However, given that possibility of regression is rarely used as the sole basis for determining nutrition risk, and that participants who had actually regressed to the previous nutrition risk would presumably be certified again, significant savings are unlikely.

Costs

Most of the provisions in this final rule are generally economically insignificant to the costs and overall operations of the WIC Program. Some of the provisions reflect the current practice of many WIC State agencies, while others are optional at the discretion of WIC State agencies.

As previously noted, one of this rule's provisions which may have a notable financial impact provides WIC State agencies with the option to extend the certification period for all participant categories until the end of the last month of the certification period, and also provides the option to extend a breastfeeding woman's certification period up to her infant's first birthday or until the woman ceases to breastfeed.

Since this provision is optional, the number of WIC State agencies which may choose to extend these certification periods is unknown. Also, most women who continue to breastfeed longer than six months are presumably certified for a second six-month period. Therefore, implementation of the option to extend the certification period of breastfeeding women is not likely to have a major impact on either program participation

among breastfeeding women or on program costs.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Kate Coler, Deputy Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. State and local WIC agencies would be most affected because there are several additional program administration requirements. However, this rule also reduces considerably more program administration requirements. The net effect on State and local agencies is expected to result in reduced and streamlined administrative procedures. Participants and applicants would also be affected by changes in application processing, certification, and the disclosure of information.

Unfunded Mandates Reform Act

Title II of the 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121. The Food and Nutrition Service (FNS) has considered the impact of this rule on State and local governments and has determined that this rule does not impose substantial or direct compliance costs on State and local governments, but that it does have Federalism implications because this rule preempts State law. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is required.

Prior Consultation With State Officials

Prior to drafting the final rule, a comment period was provided to permit State and local agencies and the general public the opportunity to comment on the proposed changes. In addition, some of the proposed changes were as a result of input from State and local agencies such as changing certification periods and greater flexibility in sharing confidential WIC information. Further, because the WIC Program is a State-administered, Federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other WIC Program rules. Comments on the proposed rule and other comments, concerns and recommendations by State and local agencies through other forums have been beneficial in ensuring this final rule reflects concerns raised by these entities.

Nature of Concerns and the Need To Issue This Rule

State agencies generally want greater flexibility in their implementation of program policy. As stated previously, this final rule provides State and local agencies greater flexibility in some areas such as certification periods and sharing WIC information. However, it was necessary in some areas to strengthen program accountability and integrity. Comments made by State and local agencies through the proposed rule process and through other forums assisted us in identifying areas of the regulations where greater flexibility can be afforded State and local agencies.

Extent to Which We Meet Those Concerns

FNS has considered the impact of the final rule on State and local agencies. This rule makes changes to improve the accountability and effectiveness of the WIC Program, and to provide State and local agencies with greater flexibility in how they operate the program. The effects on State agencies are minimal since some requirements such as obtaining proof of pregnancy are optional requirements, and other requirements are codifying existing policy that the majority of State agencies have already implemented.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

In the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the administrative procedures which must be exhausted are as follows. First, State agency hearing procedures pursuant to 7 CFR 246.9 must be exhausted for participants concerning denial of participation, disqualification, and claims. Second, State agency hearing procedures pursuant to 7 CFR 246.18(a)(1) must be exhausted for vendors concerning denial of authorization, termination of agreement, disqualification, civil money penalty or fine. Third, the State agency process for providing the vendor an opportunity to justify or correct the food instrument pursuant to 7 CFR 246.12(k)(3) must be exhausted for vendors concerning delaying payment for a food instrument or a claim. Fourth, State agency hearing procedures pursuant to 7 CFR 246.18(a)(3) must be exhausted for local agencies concerning denial of application, disqualification, or any other adverse action affecting participation. Fifth, FNS hearing procedures pursuant to 7 CFR 246.22 must be exhausted for State agencies concerning sanctions imposed by FNS. Sixth, administrative appeal to the

extent required by 7 CFR 3016.36 must be exhausted for vendors and local agencies concerning procurement decisions of State agencies.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of WIC Program applicants and participants, FNS has determined that there is no way to soften their effect on any of the protected classes. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local agencies operating the WIC Program from engaging in actions that discriminate against any individual in any of the protected classes; see 7 CFR 246.8(a) for the non-discrimination policy of the WIC Program. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this final rule have been previously approved under OMB #0584–0043, and no changes are needed as a result of this final rule.

E-Government Act Compliance

FNS is committed to compliance with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The new definitions of ''electronic signature'' and ''sign or signature'' are intended to facilitate paperless systems in all administrative activities of the program. The new State Plan requirements, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may share participant information electronically pursuant to a written agreement and consistent with Federal policy, including such information sharing based on the new non-WIC purposes provided in this final rule as well as the previously allowed non-WIC purposes.

Background

On December 2, 2002, the Department published a proposed rule at 67 FR 71774 concerning revisions of miscellaneous provisions of the WIC regulations. The comment period ended on April 1, 2003. Thirty-five letters were submitted to the Department to provide comments on the proposed revisions. We greatly appreciate these comments, all of which were carefully considered in the development of this final rule. Following is a discussion of each provision as proposed, the comments received, and an explanation of the provisions set forth in this final rule.

1. Definitions (§ 246.2)

The proposed rule included new definitions for ''sign or signature'' and ''electronic signature,'' to provide State agencies the option of using electronic signatures in their administration of the WIC Program. This definition of ''electronic signature'' was derived from the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, signed June 30, 2000), also known as ESIGN. The Department sought to introduce these definitions to clarify that use of the terms ''sign'' or ''signature'' throughout 7 CFR Part 246 is not intended to exclude the use of electronic signatures. At the same time, we also wanted to make clear that electronic signatures may be used only if the State agency ensures the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, WIC Program regulations, and applicable Office of Management and Budget Circulars, including A–130, concerning confidentiality.

All of the commenters supported the new definitions. However, several commenters sought clarifications. One commenter questioned whether the new definitions constituted an endorsement of the ''paperless office'' concept, e.g., electronic certification forms. Similarly, another commenter asked whether the new definitions applied to vendor agreements. Finally, one commenter pointed to the need for protecting access to benefits in the event of a technology failure.

The Department did not intend to confine the use of electronic signatures to one part of WIC Program administration, such as certification, so that electronic signatures could not be used in other administrative activities of the program, such as vendor management. Indeed, as indicated in the preamble of the proposed rule, the new definitions were intended to facilitate paperless systems. We recognize the efficiencies and advantages of paperless systems, and encourage State agencies to implement such systems in all administrative activities of the program. Of course, as previously noted, the reliability and integrity of such systems is paramount; this would include safeguarding benefits in the event of a technology failure or disaster.

In addition, even though the Department supports the paperless office concept, this concept would not be mandated. This would be a State option, including the specific kind of technology adopted, as discussed in the preamble of the proposed rule. State agencies need to consider the costs, the views of participants, and the legal aspects of implementing this option. In this latter regard, State agencies should consult legal counsel on whether State law permits electronic signatures for certain kinds of documents, such as vendor agreements or contracts with local agencies. Accordingly, as set forth in the proposed rule, the definitions of ''sign or signature'' and ''electronic signature,'' as proposed, are retained in this final rule.

Recently, the Governmentwide Requirements for Drug-Free Workplace have been moved from 7 CFR part 3017 to 7 CFR part 3021 of the Departmental regulations. Therefore, this final rule includes a new definition of 7 CFR part 3021 to reference these requirements, and removes the reference to the drug-free requirements in the definition of 7 CFR part 3017. In addition, all other references to the drug-free workplace requirements in 7 CFR part 246 have been changed to reference Departmental regulations at 7 CFR part 3021. Further, unlike 7 CFR part 3017, 7 CFR part 3021 does not require a certification regarding a drug-free workplace; accordingly, this certification requirement has been deleted from § 246.3(c)(2). These changes are nondiscretionary, and do not require that the public be given an opportunity to comment.

In addition, in this final rule, the definition of ''State'' has been revised to reflect a change in the definition of ''State'' in section 15 of the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1786, which applies to all programs under the CNA, including the WIC Program. The CNA no longer refers to the Trust Territory of the Pacific Islands

since the Trust Territory no longer exists.

Therefore, the revision to the definition of ''State'' is included in this final rule.

Finally, we have added a definition of ''Employee fraud and abuse,'' as discussed in section 4 of this preamble.

2. State Plan Requirements (§ 246.4(a))

We proposed a number of new State Plan provisions which would be required under § 246.4(a) of the WIC regulations. The comments on some of these State Plan provisions require more discussion than the comments on other proposed State Plan provisions. Therefore, these provisions are addressed in other sections of the preamble. Section 2 of this preamble addresses provisions and comments which do not require extensive discussion.

First, one commenter pointed out that we had not included a State Plan provision to provide State agencies the option to require applicants to provide proof of pregnancy in § 246.4(a) of the proposed rule. As indicated elsewhere in the proposed rule and its preamble, we had intended that a new State Plan provision would be added to § 246.4(a). However, this new provision was inadvertently omitted from the Proposed Rule. Accordingly, we have added it to this final rule.

Second, several commenters objected to the proposed State Plan requirement for listing all of the organizations with which the State agency or its local agencies had written agreements on the sharing of confidential participant information. One of these commenters pointed out that this provision could delay implementation of an information-sharing agreement if this agreement was executed after the annual submission of the State Plan. Another commenter stated that such a list in the State Plan would not constitute adequate notice to the applicant.

As noted under section 22–C of this preamble, the proposed State Plan provision for listing all programs that have information-sharing agreements with the State agency and its local agencies, and the uses of such information, are only intended for informational purposes. As proposed, FNS did not intend to approve State agencies' decisions in this matter as long as the reasons for sharing information were consistent with the authorized uses in the proposed rule. Therefore, State and local agencies can execute such agreements prior to submission in State Plans. The process of providing a list to FNS is not intended to create a barrier to entering into information sharing agreements. Further, such lists are not intended to serve as notice to WIC applicants and participants. As proposed, and as required in this final rule, State agencies are required to provide applicants and participants with notification at certification of public organizations that WIC intends to share confidential WIC information and the purposes for sharing such information.

Third, we have not included a revision to § 246.4(a)(11)(ii) in this final rule. The proposed revision in this paragraph referred to describing the criteria for deciding who will be offered individual care plans. This proposed change has not been included in this final rule since it was an inadvertent error; we did not intend to propose a change in this paragraph.

Finally, we have added a new sentence to § 246.4(a) to require the use of a Universal Identifier as part of State Plans. The Office of Management and Budget (OMB) requires entities applying for Federal grants to provide government agencies with a Universal Identifier. This requirement is set forth in an OMB Policy Directive, ''Use of a Universal Identifier by Grant Applicants,'' which was published in the **Federal Register** on June 27, 2003, at 68 FR 38402. The annual WIC Program State Plan submission is considered an application for a federal grant, and thus covered by this requirement. Currently, the Universal Identifier system in use is the Data Universal Numbering System (DUNS) identification number. FNS has issued guidance on how to obtain a DUNS number. FNS will address the submission of DUNS numbers as part of the WIC State Plan Guidance. It is not necessary for FNS to issue a proposed rule on this revision to the WIC Program regulations since the OMB Policy Directive is nondiscretionary and is already in effect. Also, as explained in the preamble of the OMB Policy Directive, OMB has determined that use of a DUNS number is not a significant burden under the Paperwork Reduction Act.

3. Conflict of Interest (§ 246.4(a))

The Department proposed a new State Plan requirement for addressing employee conflicts of interest at the local agency level, as recommended by an August 1999 Report by the Government Accountability Office (GAO), FOOD ASSISTANCE: Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened. We proposed a new paragraph in § 246.4(a) to require that State agencies develop and implement policies and procedures to prevent conflicts of interest within the local agency staffs. Specifically, we wanted State agencies to develop policies and procedures concerning local agency employees certifying themselves, relatives or friends, and also concerning an employee both certifying and issuing food benefits to a participant, i.e., lack of separation of duties.

At the same time, we recognized in the preamble of the proposed rule that there may be practical circumstances, such as the availability of only one employee to conduct a clinic, which would preclude a strict prohibition on some practices. For such situations, we pointed out, an effective alternative policy or procedure would be needed, such as supervisory review of the records of the certifications and benefits issuance performed by such employees. As noted below in this section, we have added language to the proposed paragraph to recognize that effective alternative policies and procedures will be needed when strict prohibition is not possible.

Most of the commenters supported the proposed provision. (The 1999 GAO study found that most of the WIC State agencies had policies on conflicts of interest and separation of duties.) Commenters opposing the proposed provision based their position on the practical difficulties precluding a strict prohibition on conflicts of interest, arguing that sometimes no effective alternative policy or procedure would be possible. In this regard, one of the supporting commenters requested that the proposed provision itself require reasonable policies and procedures when actual separation of duties is not possible, instead of stating this only in the preamble. Also, one of the commenters opposing the provision stated that separation of duties is not violated when one staff member conducts part of the certification and also issues food instruments; for example, if one staff member determines income eligibility and issues food instruments, this should be deemed acceptable if another staff member determines nutrition risk.

As previously noted, we have added language to the proposed paragraph to permit effective alternative policies and procedures when strict prohibition is not possible. This additional language provides more explicit guidance than merely inserting the term ''reasonable.'' Also, we do not support the comment that there may be circumstances where no effective alternative policy or procedure is possible. State agencies should consult with the appropriate FNS Regional office and with legal

counsel for advice on alternative approaches to deal with difficult circumstances complicating strict compliance with the requirements regarding conflicts of interest and separation of duties.

We agree with the comment indicating that separation of duties is not violated if at least two WIC personnel are integral to the certification of a participant. The reason for the separation of duties concept is to ensure that one employee cannot both certify and issue benefits. The commenter opposing the provision correctly pointed out that this requirement is satisfied if two WIC employees are required to perform certification determinations even though one of them also issues food instruments, since the person issuing food instruments could not complete the certification process alone. Therefore, we have revised the proposed paragraph to require the State agency to prohibit one employee from being solely responsible for determining the eligibility of an applicant for all certification requirements and for issuing food instruments to that participant, or to provide effective alternative policies and procedures for situations when such prohibition is not possible. Moreover, this revision also applies to circumstances when an employee might be certifying herself or friends and relatives because no other staff is available.

Accordingly, in this final rule, the proposed paragraph has been added to § 246.4(a), revised as noted above.

4. Participant and Employee Fraud and Abuse (§ 246.4(a))

Also in response to the GAO study on WIC fraud and abuse, the Department proposed to require a description in the State Plan of the State agency's plans for collecting and maintaining information on cases of participant and employee fraud and abuse, including the nature of the fraud detected and the associated dollar losses. As proposed, this requirement would be added to § 246.4(a).

Most of the commenters supported the proposed provision. In fact, the GAO study reflected that 30 of the 51 WIC State agencies responding to the GAO survey collected information on the number and characteristics of participants who engage in fraud and abuse. Commenters opposing the proposed provision stated that it was unnecessary because participant and employee fraud is minimal; one commenter stated that participant fraud and abuse should have declined as a result of the WIC Certification Integrity Rule (65 FR 77245, December 11, 2000), which requires applicants to provide proof of income, residency and identity.

We do not support these positions. It is not possible to determine the extent of potential fraud and abuse in the program when some State agencies may not be collecting data on this matter. Moreover, the documentation requirements of the Certification Integrity Rule are only one part of our efforts to detect and prevent fraud and abuse. Such requirements cannot be relied upon to prevent all fraud and abuse. Further, the Certification Integrity Rule did not address employee fraud and abuse.

Some commenters opposing the proposed provision also stated that collecting information on participant and employee fraud and abuse would be administratively burdensome. We recognize that such activity will involve some administrative burden, but we do not believe that collecting information on the nature and costs of participant and employee fraud and abuse is unduly burdensome. As previously noted, a majority of WIC State agencies are already collecting this data. Moreover, as indicated by GAO, failure to collect such information may send an unintentional message to agency officials and other stakeholders that preventing and detecting participant/employee fraud and abuse is a low priority, thus damaging the public's trust in the WIC Program.

Some of the supportive commenters requested clarification on the meaning of several terms, including ''participant fraud and abuse,'' ''employee fraud and abuse,'' and ''dollar losses.'' Two of these terms have already been defined in the regulations and further clarified in a policy memorandum. Section 246.2 sets forth the definition of ''participant violation,'' which is the equivalent of ''participant fraud and abuse.'' Regarding dollar losses, § 246.23(c)(1)(i) requires a claim for the full value of benefits that have been obtained or disposed of improperly as the result of a participant violation. The full value of such benefits would be either the total purchase price of the food instruments involved or the total post-rebate food cost of the benefits involved, and would not include the nutrition services and administration (NSA) costs expended for the participant; see WIC Policy Memorandum #2002–1, Revision 1, Clarification of WIC Food Delivery Systems Final Rule Questions and Answers, June 10, 2003, page M–1, Question 1. Finally, we agree that ''employee fraud and abuse'' should be defined in the regulations. Accordingly, in this final rule, in § 246.2, we have added a definition of this term, based on the definition used in the GAO study.

Several supportive commenters raised other issues. Several commenters indicated that the State agency should collect the information on participant and employee fraud and abuse, instead of making local agencies responsible for collecting and maintaining the information. The preamble of the proposed rule indicated that this provision would require only a description of the State agency's plans for collecting this information.

Therefore, as set forth in the proposed rule, State agencies should track this information in order to detect trends and to allocate its investigative, audit, and technical assistance resources accordingly. Also, such information does not always originate at the local agency level, as when a State agency initiates an investigation based on an anonymous tip provided to the State agency indicating fraudulent activity involving a local agency. Therefore, a revision to the provision, as suggested, is not necessary.

Finally, we note that several comments expressed concern that the requirement for collecting information on participant and employee fraud and abuse would ultimately become a requirement for State agencies to report this information to FNS. The proposed rule did not include a requirement to report such information to FNS, and neither does this final rule. However, the aforementioned GAO study clearly pointed towards such a reporting requirement, finding that the absence of this data adversely impacts FNS' and State agencies' ability to manage the program. As explained in the study, GAO decided not to recommend such a reporting requirement because FNS had indicated that it would work with State agencies and the National WIC Association (NWA) to develop cost-effective strategies for reporting the data to FNS. FNS and NWA are currently working to identify such a strategy.

5. Selection of Local Agencies (§ 246.5)

The Department proposed to remove the requirement in the current § 246.5(c)(1) and (d)(2) of the regulations for WIC State agencies to fund new local agencies in areas based on the sequential order of neediest areas listed in the Affirmative Action Plans that are part of each State agency's Plan of Operation. This change was intended to provide State agencies with the flexibility to select a local agency in the neediest unserved area where practical circumstances permit, so that, for example, a local agency may be selected in an unserved needy area where a

health care infrastructure exists instead of a local agency in an area with greater need but without a health care infrastructure.

The majority of the commenters supported the proposed provision. However, a few commenters either opposed the proposed revision or expressed reservations. The opposing commenters stated that areas with the greatest need should continue to be the highest priority for selection of new local agencies. One of the commenters recommended that the provision specify that the selection of local agencies is contingent on the availability of funds, and another commenter recommended that the Affirmative Action Plan should be required until WIC services have been made available equally throughout all areas of the State.

It was not the intent of the proposed provision that State agencies ignore the Affirmative Action Plan. The proposed rule would have required the State agency to consider the Affirmative Action Plan, but not be bound by it. The Department believes that the State agency is in the best position to judge whether the practical circumstances should supersede the Affirmative Action Plan when selecting a new local agency. Also, it is not necessary to state in the regulations that selection of a new local agency is subject to the availability of funds. It is understood that the State agency is responsible for ensuring the availability of funds and applying this factor in the selection of local agencies.

Accordingly, as proposed, this final rule removes the requirement in § 246.5(c)(1) and (d)(2) of the regulations for WIC State agencies to fund new local agencies in areas based on the sequential order of neediest areas listed in the Affirmative Action Plans that are part of each State agency's Plan of Operation.

6. Requesting Proof of Pregnancy, Checking Identification and Other Basic Certification Procedures (§ 246.7(c))

The Department proposed to expand § 246.7(c) to address several basic certification procedures, along with the delineation of eligibility criteria, in an effort to highlight the importance of certain procedures, such as providing proof of residency and proof of identity, and ensuring that applicants are not charged for certification. To accomplish this, we proposed to move several provisions and to add a provision. We proposed to move the provision addressing proof of residency/proof of identity from § 246.7(l)(2) to § 246.7(c)(2)(i), and to move the provision requiring program certification without charge to the applicant from § 246.7(m) to § 246.7(c)(4). We also proposed a new provision addressing pregnancy tests.

Proof of Pregnancy

The Department proposed basic guidelines that State and local agencies must observe if the State agency chose to require documentation of pregnancy as part of the certification process. For these reasons, we proposed to add a new paragraph (c)(2)(ii) stating that State agencies may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but whose conditions (as pregnant) are not visibly noticeable and do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency would then be allowed a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation was not provided as requested, the local agency would then be justified in terminating the woman's WIC participation during the certification period.

The majority of commenters supported the proposed provision, although some of these comments sought clarification on whether this provision would be optional. Some of the supportive commenters also recommended the provision apply only when fraud was suspected. Other supportive commenters recommended visual observation by a professional to confirm pregnancy instead of self-testing or testing by WIC. Also, one commenter recommended 90 days for the participant to provide proof, consistent with current WIC policy. Commenters opposing the proposed provisions stated that requiring proof of pregnancy would be a barrier to participation, potentially eroding prenatal care and leading to lower birth weights.

As indicated in the preamble of the proposed rule, the Department intends for proof of pregnancy to be a State option. Therefore, in response to commenters' concerns, we have revised the proposed paragraph to clarify this issue. State agencies concerned about proof of pregnancy becoming a barrier to participation could choose not to implement this option. Further, a State agency could choose to continue to use visual observation of pregnancy, and require proof only when the information is questionable and/or fraud is suspected.

The Department agrees with commenters who expressed concern about the cost of pregnancy tests. Proof of pregnancy is not a mandatory condition of eligibility for the WIC Program. As a result, the costs associated with obtaining such documentation are not allowable WIC nutrition services and administrative expenditures. Also, such costs cannot be borne by the participant since § 246.7(m) requires that the certification procedure shall be performed at no cost to the participant.

As noted above, some commenters recommended a 90-day timeframe for the participant to provide documentation of pregnancy, consistent with current WIC policy. This policy was issued in 1992. However, this policy was superseded by legislation. Section 17(d)(3)(B) of the CNA was added in 1994. The legislation specifies that an income-eligible pregnant woman may be considered presumptively eligible to participate in the WIC Program and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. Since the determination of nutrition risk requires knowledge of the participant's categorical status, i.e., her pregnancy, proof of pregnancy must be provided within 60 days after certification, assuming that the State agency has opted to require such proof.

Therefore, the provisions as proposed pertaining to proof of pregnancy remain unchanged in this final rule.

7. Determining Income Eligibility (§ 246.7(d))

The Department proposed several changes to this section of the regulations, as discussed below.

A. Use of State or Local Income Health Care Guidelines to Determine Income Eligibility for WIC

The first proposed revision, at paragraph (d)(2)(iii), would require State agencies using State or local income guidelines for free or reduced-price health care to base the income eligibility determinations of WIC applicants on the income and family definition and exclusions set forth in §§ 246.7(d)(2)(ii), 246.2, and 246.7(d)(2)(iv), respectively. This change would continue to allow variation among the State agencies only with regard to the actual income guidelines used (i.e., the percent of gross income above the Federal poverty income guidelines, up to a maximum of 185 percent), but not with the definition of income, family, or exclusions from income. This proposed revision would continue the WIC Program's current policy of excluding from these requirements persons who are determined adjunctively or automatically income eligible.

We proposed this change for two reasons. First, although § 246.7(d)(1) permits use of State or local free or reduced-price health care income guidelines, these guidelines cannot exceed 185 percent of the Federal poverty income guidelines; in fact, all WIC State agencies currently use 185 percent of the Federal poverty income guidelines. Second, procedurally it would be simpler for local agencies to apply the WIC income definition and exclusions outlined in the regulations to all applicants rather than apply two sets of income guidelines and family definitions and exclusions to ensure WIC eligibility requirements are met.

The majority of commenters supported this revision, although one supportive commenter suggested that the Department consider adopting the definition of ''family'' used by the Federal Department of Health and Human Services (HHS) to promote one-stop shopping. Similarly, one of the few opposing commenters stated that the revision would force the cessation of integrated applications for multiple programs because WIC income determinations would no longer be able to use the income definitions of other programs.

Use of the HHS definition of ''family'' could result in the exclusion of income potentially being shared by household members such as unrelated individuals who are living together. Such action would not represent actual household circumstances with regard to income eligibility. Further, by law, WIC income eligibility guidelines (185 percent of poverty) are those guidelines used for the National School Lunch Program (NSLP). Therefore, the rules and policies used for the NSLP are used for the WIC Program with regard to normal income screening procedures, including definition of family. As a result, the Department does not support this commenter's recommendation.

Accordingly, this final rule, in § 246.7(d)(2)(iii) retains the provisions as proposed.

B. Consideration of Loans as Income

The Department proposed to exclude short-term, unsecured loans from the WIC income determination process. Program regulations have not specifically addressed this issue; however, FNS Instruction 803–3, Rev. 1, WIC Program—Certification: Income Eligibility, dated April 1, 1988, clarifies that funds from loans are not to be counted as income because they are only temporarily available and must be repaid.

All of the commenters supported the revision. However, several commenters requested guidance on the meaning of the term ''short-term, unsecured,'' and guidance on the types of loans that would be excluded.

Accordingly, in § 246.7(d)(2)(iv)(C) of this final rule, the Department has decided to delete the term ''short-term, unsecured,'' and to delete the reference to the expectation that the loan will be repaid in a reasonably short period of time since these phrases are unnecessary. By definition, loans are only temporarily available and must be repaid, so that inclusion of loans as income would be inappropriate in the WIC income determination process. We have retained the term ''constant and unlimited access,'' since this explains why a loan would not constitute income. This is consistent with the term ''other cash income'' at § 246.7(d)(2)(ii)(L), which refers to resources which are easily accessible to the family.

8. Limitation on the Use of Possibility of Regression as a Nutrition Risk Criterion (§ 246.7(e)(1)(vi))

As explained in the proposed rule, historically, program regulations have permitted WIC participants to remain on the program due to the possibility of regression, i.e., previously certified participants who might regress in nutritional status if they are not allowed to continue to receive WIC benefits. This has been allowed as a nutrition risk criterion in order to prevent the revolving door situation whereby the nutrition risk status of individuals improves as a result of participation in the WIC Program and they are removed at the conclusion of a certification period, only to deteriorate in nutrition status at a later date, necessitating re-entry into the program.

It has always been the Department's position that the possibility of regression as a nutrition risk criterion should not be used excessively because it could result in situations where individuals with no current nutrition risk condition are served while eligible applicants who have current, documented risks go unserved. Therefore, in regulations, the Department confirmed the State agency's authority to limit the number of times and circumstances under which a participant may be certified for possible regression. Many State agencies have adopted limitations.

In an effort to ensure that all State agencies target benefits to those at greatest nutrition risk, the Department proposed to limit the use of regression as a nutrition risk criterion to only one time following a certification period. In other words, consecutive certification periods based on regression would not be allowable. In addition, as proposed, individuals who are certified based on the possibility of regression would be placed in either the same priority for which they were initially certified, or in Priority VII (for all participants certified based on regression), if the State agency is using that priority level.

The majority of commenters supported the proposed provisions. Those commenters opposing the limitation on the use of regression stated that WIC serves a vulnerable population that is food insecure, often spending scarce dollars on food last, after other expenses. Therefore, applicants denied certification due to lack of a nutrition risk would be certified shortly thereafter with a nutrition risk that may not have occurred had they remained on the program. Such commenters stated that this result would conflict with WIC's preventive role. However, the Department continues to believe that the repeated use of regression in consecutive certification periods undermines the Department's efforts to target benefits to those persons in greatest need and at greatest nutrition risk.

Further, some commenters cited the Institute of Medicine (IOM) report ''Dietary Risk Assessment in the WIC Program,'' March 2002, as supporting their position that the proposed provision would conflict with WIC's preventive role since some nutrition risks may require more than one regression certification period to be resolved. One commenter stated that the use of regression should not be limited since the IOM findings indicate that the tools to assess dietary adequacy are not valid.

The IOM report found that 96 percent of all individuals in the United States and a higher percentage of low-income individuals fail to consume the recommended number of daily servings specified by the Dietary Guidelines for Americans, and that there is no scientifically valid method to assess an individual's usual dietary intake. Concerning WIC eligibility, the report recommended a presumption of nutrition risk for all otherwise eligible women, and children 2 to 5 years old, based on failure to meet dietary guidelines. The IOM report did not include findings or recommendations specific to regression. The Department believes that prohibiting consecutive certification periods based on regression will not result in denying benefits to WIC applicants who are at nutrition risk based on dietary inadequacy.

Several supporting commenters recommended certain revisions to the

proposal. One commenter stated that the provision should allow an applicant to be certified for regression to a different priority, such as children to Priority V who had previously been certified at Priority III, consistent with § 246.7(e)(4). Another commenter sought clarification of the rule so that regression only applies to children and breastfeeding women. Finally, one commenter requested that the final rule clarify whether the provision to certify only once based on regression can actually be used more than once for the same participant as long as the occurrences are not consecutive.

The Department agrees with the suggestion that WIC agencies should be permitted to assign an applicant to a different priority level for regression other than the one used in the previous certification, or Priority VII, as long as it is a lower priority than the priority level assigned at the previous certification, consistent with § 246.7(e)(4). It is important to recognize that a participant certified for regression, without any currently-existing nutrition risk condition, could be placed in a higher priority level than a participant who has, for example, a dietary condition. In the event of funding limitations, this could result in the certification of one applicant based on regression while another applicant with an existing nutrition risk condition is denied benefits. To avoid this consequence, as we pointed out in the preamble of the proposed rule, the State agency should consider assigning a lower priority level for participants certified based on regression.

Accordingly, in § 246.7(e)(1)(vi) of this final rule, in addition to placing applicants certified based on regression in the same priority category used at initial certification, or in Priority VII, State agencies may also use another priority level lower than the priority level for which they were assigned at the previous certification, consistent with § 246.7(e)(4).

We have also clarified in this final rule that applicants shall not be certified for regression for consecutive certification periods. Therefore, participants could be certified for regression more than once during the time they actually participate in the program, as long as they are not certified based on regression for consecutive certification periods.

Based on commenters' concerns, the final rule also clarifies that when certifying participants for regression and assigning a priority category, the nutrition risk criterion of the participant during the previous certification period must be appropriate for the category of the participant for the subsequent certification. For instance, as pointed out in the preamble of the proposed rule, a postpartum woman should not be certified based on the possibility of regression to *hyperemesis gravidum* (morning sickness), since this condition is unique to pregnancy and cannot occur postpartum. As previously noted, a supporting commenter requested a prohibition on the use of regression as a nutrition risk criterion for pregnant women, infants and postpartum non-breastfeeding women since only one certification period is permitted for these categories. Actually, under the current § 246.7(g), a State agency may provide a six-month certification period for infants, but the commenter correctly indicates that certain nutrition risk conditions cannot cross over from one category to another.

9. Certification Periods (§ 246.7(g)(1))

In response to concerns cited by Congress, State agencies, and the NWA, the Department proposed to modify the timeframes for certification periods in order to make them more consistent across participant categories. Section 246.7(g)(1) of the current regulations establishes the following timeframes for certification:

A/an:	Is currently certified:
Pregnant woman	For the duration of her pregnancy, and up to six weeks after the infant is born or the pregnancy is ended.
Postpartum woman	Up to 6 months after the baby is born or the pregnancy is ended (postpartum).
Breastfeeding woman	Every six months ending with the infant's first birthday.
Infant	Approximately every six months. The State agency may permit its local agencies to certify infants under six months of age for a period extending up to the first birthday, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every six months ending with the last day of the month in which a child reaches his/her fifth birthday.

Some State agencies expressed concern that the current timeframes for establishing certification periods are complicated and administratively burdensome, requiring the frequent proration of monthly food benefits and special data processing capabilities to accommodate specific cut-off dates. Also, NWA expressed concern about the lack of consistency in current certification period timeframes. In response, the Department proposed to allow certification periods for all participant categories to be extended to the end of the month. Specifically, the following maximum certification periods were proposed in § 246.7(g)(1):

A/an:	Will be certified:
Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes six weeks old. (For example, if the infant is born June 4, six weeks after birth would be July 16, and certification would end July 31).
Postpartum woman	Up to the last day of the sixth month after the baby is born or the pregnancy ends (postpartum).
Breastfeeding woman	Approximately every six months ending with the last day of the month in which the infant turns 1 year old.
Infant	Approximately every six months. The State agency may permit its local agencies to certify infants under six months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every six months ending with the last day of the month in which a child reaches his/her fifth birthday. (No change from current regulations).

Commenters overwhelmingly supported the proposed changes to the certification period. However, many of the supporters requested further revision of the certification period requirements to extend the current six-month certification periods for breastfeeding women to coincide with the option to certify breastfed infants up to the infant's 1st birthday, or until the women cease breastfeeding, whichever occurs first, and to establish 12-month certification periods for children.

Subsequent to publication of the proposed rule and receipt of comments, the certification period for breastfeeding women was addressed in Congress in Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004. Section 203(b)(1) of that Act amended section 17(d)(3) of the CNA to allow State agencies the option to certify a breastfeeding woman for up to one year postpartum, or until the woman stops breastfeeding, whichever occurs first. This provision became effective on October 1, 2004. FNS notified State agencies of the effective date of this provision on August 5, 2004. Consequently, there is no need to address the comments on the proposed rule concerning the certification period for breastfeeding women. Instead, we are using this final rule to revise § 246.7(g)(1)(iii) to codify the option set forth in legislation on the certification period for breastfeeding women.

However, we do not support the recommendation of some commenters to change the certification period for children from every 6 months to every 12 months. The current six-month certification period increases the likelihood that the child will receive a health assessment and that nutrition education or other nutrition intervention will be provided to the parent/caretaker. Assessing a child's nutritional and health status at six-month intervals is also consistent with the WIC Program's emphasis on preventing childhood obesity.

One commenter who opposed the proposed changes to the certification periods indicated that costly changes would be needed to an automated system that defaults to the 30th day even if a month ends on the 31st day. Another commenter who opposed the changes expressed concern about the need for partial food packages if the proposed rule would require that food packages could only be issued to the end of the month. Likewise, one commenter who supported the changes requested clarification on the implications of the proposed rule if the certification period ends on the first day of a month.

As noted in the preamble of the proposed rule and intended by this final rule, these new provisions would not remove the authority of State agencies to maintain current certification period lengths or to permit local agencies to shorten certification periods on a case-by-case basis. For example, some State agencies that certify all infants every six months, may choose to continue certifying breastfeeding women every six months and not implement the option to extend certification periods up to the end of the month in which infants turn one year old. Further, proration of program benefits continues to be an effective means of targeting benefits and managing program costs. Also, the final rule does not abridge the discretion of State agencies to maintain current certification periods or to prorate benefits in order to accommodate automated systems, although enhancement of such systems may be a more effective strategy to address certification periods. As indicated previously, State agencies are encouraged to contact the appropriate FNS regional office to identify potential sources of funds for this purpose in addition to the administrative funds provided as part of the WIC grant.

Accordingly, this final rule provides for the following certification periods in § 246.7(g)(1):

A/an:	Will be certified:
Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes six weeks old. (For example, if the infant is born June 4, six weeks after birth would be July 16, and certification would end July 31).
Postpartum woman	Up to the last day of the sixth month after the baby is born or the pregnancy ends (postpartum).
Breastfeeding woman	Approximately every six months. The State agency may permit its local agencies to certify a breastfeeding woman up to the last day of the month in which her infant turns 1 year old, or until the woman ceases breastfeeding, whichever occurs first.
Infant	Approximately every six months. The State agency may permit its local agencies to certify an infant under six months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every six months, ending with the last day of the month in which a child reaches his/her fifth birthday. (No change from current regulations.)

10. Mid-Certification Actions (§ 246.7(h))

The Department proposed several revisions to this section, the most significant of which would require local agencies to reassess a participant's income eligibility (including household composition) during the certification period when information is received about a change in circumstances, indicating possible income ineligibility. Many State agencies require reassessment of income eligibility based on receipt of information indicating a change in circumstances. However, current regulations do not mandate such assessments.

The Department proposed that reassessment of Program eligibility would apply only to income eligibility, not to the participant's nutrition risk status. In addition, the Department specified mandatory versus optional mid-certification actions. As proposed, mandatory mid-certification actions included reassessment of income eligibility based on information received and disqualification of participants, including family members, if found to be over-income. Optional mid-certification disqualification actions included those necessitated by funding shortages or the failure of a participant to pick up food instruments or supplemental foods for a number of consecutive months as established by the State agency.

The proposed change would require local agencies to reassess income eligibility when information is received indicating that a change in income eligibility has occurred. Local agencies would not be required to seek out information. However, if information comes to their attention, either from the participant or from other sources, which suggests ineligibility, this would trigger

the regulatory requirement to reassess WIC income eligibility. For an adjunctively or automatically income-eligible participant, an income reassessment would be generated within a certification period if the local agency obtained/received confirmation that the individual or other eligible family member is no longer participating in any of the programs which are authorized/permitted to be used to deem an individual as income eligible for the WIC Program. Further, the Department proposed to require that the reassessment of income ineligibility also applies to other household members currently receiving WIC benefits. When one household member is reassessed for income eligibility and determined ineligible based on household size and income, in effect all participating household members have been reassessed and are ineligible.

The majority of commenters generally supported the proposed mid-certification income reassessment process. Several State agencies indicated that they already require such assessments. However, some commenters opposed the proposed requirement. One commenter indicated that enrollment entails a commitment to a full certification period. Another commenter stated that the core purpose of the WIC Program is to provide supplemental foods and nutrition education over a period of time. Further, as noted in the preamble to the proposed rule, a commitment to an entire certification period is implied because the entire certification period may be needed to improve the nutrition status of participants.

In the preamble of the proposed rule, the Department emphasized that the CNA does not permit WIC benefits for persons who no longer meet the basic income eligibility requirements set forth in the CNA. If information comes to the attention of the local agency suggesting that a participant may be income ineligible, an income reassessment is the only way to determine whether the participant meets the income eligibility requirements of the CNA. Moreover, in response to one commenter, there is no provision in the CNA permitting the continued receipt of WIC benefits for someone who is income ineligible on the basis that this continued receipt of benefits would be viewed as transitional assistance.

As previously noted, the proposed revision of § 246.7(h) would distinguish between mandatory mid-certification disqualifications of participants and those that are optional. At the same time, we also proposed to remove the reference to disqualification based on participant violations from § 246.7(h) because the process for sanctions and claims based on participant violations was set forth in § 246.12(u). However, in this final rule, we are retaining the reference to sanctions for participant violations in § 246.7(h) to ensure that such sanctions for participant violations are clearly understood to be mandatory, except as otherwise provided in § 246.12(u).

Several commenters indicated that disqualifying a participant based on unsolicited information is unfair since other potential income ineligible participants may not be disqualified because changes in income are not known or reported to the local agency. The Department recognizes the commenter's concern. However, all participants are potentially subject to reassessment of income during their certification periods, based on new information that may come from any source. Therefore, as noted in the preamble of the proposed rule, the proposed provision is a reasonable balance between responsible action and unnecessary paperwork.

Several commenters felt that the proposed mid-certification income reassessment would be unfair because the information triggering the reassessment would often originate from an unreliable or biased source. The Department recognizes that information may come from persons who are not aware of all of the facts, and that such persons may be providing the information because of personal animosity towards the participant. However, this does not necessarily mean that the information is false or without consequence. The only way to determine the validity of the information is to conduct an income reassessment.

Several commenters indicated that the proposed provision would conflict with other requirements, including the Verification of Certification (VOC) process and the State option to determine income eligibility based on assessing annual income as opposed to current income. The Department does not agree with this position. The VOC process at § 246.7(k) provides continuation of certification and benefits for a participant transferring from one local agency to another, without requiring reapplication at the new local agency; the VOC process does not prevent a reassessment of income if new information is made known to the new local agency after the transfer. Also, the State agency option to calculate income based on the past 12 months, at § 246.7(d), instead of using current income, applies at any time an income determination is made, including mid-certification; this provision does not conflict with reassessment of income mid-certification.

Several commenters asserted that reassessment of income mid-certification would result in frequent disqualifications followed by subsequent certifications, due to income fluctuations, as well as other administrative burdens such as an increased number of disqualification letters and appeals. Several commenters also asserted that information technology systems would need costly modifications, e.g., to be able to change income information in the system mid-certification.

The Department does not anticipate a significant increase in administrative activities as a result of mid-certification income reassessments. Over 56 percent of WIC participants are adjunctively income eligible for WIC based on their eligibility to receive Food Stamps, Medicaid, or Temporary Assistance for Needy Families (TANF). (See WIC Participant and Program Characteristics 2002, USDA Food and Nutrition Service, Report No. WIC–03–PC, September 2003.) Under § 246.7(d), adjunct or automatic WIC income eligibility is determined based on documentation of an individual's, or certain family members', eligibility to receive benefits in other programs such as Food Stamps, Medicaid and TANF. These programs screen for income eligibility and use maximum income limits at or below WIC income guidelines (185 percent of poverty). Therefore, the normal WIC income eligibility screening process is not used for a large majority of participants. Further, § 246.7(d) permits State agencies to designate other programs as establishing automatic income eligibility for WIC in a manner similar to adjunctive income eligibility. Thus, most mid-certification income reassessments may likely involve little more than reconfirming adjunctive or automatic WIC income eligibility.

In this regard, one commenter expressed concern about the administrative burden imposed on local agency staff and participants by income reassessments for postpartum WIC participants whose Medicaid eligibility ceases 60 days following birth. However, under § 246.7(d), adjunctive income eligibility extends not only to the WIC applicant who is certified for Medicaid, but also to a WIC applicant who is a member of a family in which a pregnant woman or infant is certified for Medicaid (or is a member of a family certified for TANF). Thus, assuming that the reassessment of the postpartum

woman is triggered only by her loss of Medicaid eligibility and that her infant is also a WIC participant, her reassessment would likely involve no more than confirming the infant's Medicaid eligibility, which would have already been done when the infant was determined eligible for the WIC Program. In fact, the reassessment of WIC income eligibility could be eliminated if the postpartum woman is determined to be income eligible at certification based on the eligibility of her infant for the Medicaid Program.

We recognize that some State agencies' management information systems may need enhancements in order for income reassessments to be processed mid-certification. Therefore, for this reason and others, we are providing an extended implementation period to accommodate, for example, any system revisions or enhancements that may be necessary. WIC State agencies that need to enhance their information systems to accommodate mid-certification income reassessments, or for other reasons, are encouraged to contact the appropriate FNS regional office to identify potential sources of funds for this purpose in addition to the administrative funds provided as part of the WIC grant.

Finally, the Department finds considerable merit in two other comments received regarding reassessment of income mid-certification. One of these comments pointed out that a participant, parent or guardian would have no incentive to cooperate with the reassessment process after receiving the last set of food instruments for the certification period. The other comment asserted that the participant, parent or guardian would need a reasonable amount of time to provide income documentation to the local agency.

The Department agrees that, if the food instruments for the last month of certification have already been provided to the participant, action to reassess income eligibility and all necessary follow-up action may be pointless. In addition, a sufficient period of time would be needed to contact the participant, reassess income eligibility, process any necessary disqualification action and allow sufficient time for potential appeal of the action by the participant, parent or guardian, as set forth in § 246.9(e), and to provide for continuation of benefits if an appeal is submitted within the 15-day advance notice period required by § 246.7(j). In addition, in some State agencies, two or three months of benefits are issued at one time (i.e., bi-monthly or tri-monthly issuance).

Therefore, § 246.7(h)(1) in this final rule remains as proposed, except as follows, based on commenters' concerns. The Department has provided an exception in this final rule to the requirement that local agencies reassess a participant's income eligibility during the certification period if new information indicates that the participant's household income may have changed. In this final rule, reassessment of income eligibility is not required in cases where sufficient time does not exist to effect the change. Recognizing the necessary action required ultimately to disqualify an individual, if necessary, ''sufficient time'' means 90 days or less before the expiration of the certification period.

11. Certification Forms (§§ 246.4(a) and 246.7(i))

The Department proposed to allow State agencies the option of substituting simpler language for the statements on rights and responsibilities required by § 246.7(i)(10) and § 246.7(j)(2)(i) through (j)(2)(iii), which must be provided in writing or read to the applicant (or parent/caregiver of a participating infant or child) at the time of certification. As proposed, such modified language would be subject to FNS approval during the State Plan approval process, contingent upon whether the language substitutions convey the same meaning and intent as the existing regulatory text. A new State Plan provision was proposed for this purpose.

All of the commenters supported the proposed revisions, although one commenter sought assurance that FNS would use its approval authority to ensure consistent language substitutions throughout the States. We will not. The purpose of this proposed provision is to provide each State agency with the flexibility to use language appropriate to its needs in order to convey the meaning of the statements required by the regulations.

Also, one commenter requested clarification on whether this language substitution process would also apply to joint application forms involving WIC and other programs. The same process would apply to joint application forms, if the regulatory language is not used. However, the State agency would be responsible for ensuring the language used also has the approval of other programs involved in the joint application form. The provision in the final rule is optional, so that a State agency could decide not to develop and submit substitute language.

Accordingly, the final rule remains as proposed. One technical amendment has been made, however, to paragraph (i)(11) of this section. In the first sentence, the reference to paragraph (i)(8) of this section has been changed to the correct reference, paragraph (i)(10) of this section.

12. Continuation of Benefits During Fair Hearings (§ 246.9(g))

The Department proposed to revise § 246.9(g) to prevent the continuation of benefits for a participant who has become categorically ineligible while awaiting a hearing decision on an appeal of an adverse action, such as a breastfeeding participant who continues to receive WIC benefits while awaiting the decision even though she had discontinued breastfeeding and was more than six months postpartum. The current language of paragraph (g) of this section technically permits the continuation of benefits in such cases.

Commenters overwhelmingly supported the proposed provision. However, one commenter recommended that benefits should be reinstated if the participant prevails on appeal. We do not support the commenter's recommendation. The reinstatement of benefits for a categorically ineligible person would mean that retroactive benefits would be provided. Historically, we have not permitted retroactive benefits in the WIC Program, as discussed below in section 16 of this preamble.

Another commenter stated that a participant should be immediately terminated based on documented fraud, subject to resumption should the participant prevail on appeal, but not retroactively. We do not support the commenter's recommendation. Although the participant may prevail on appeal, the individual would not be eligible for benefits based on a different categorical status, without reapplication, nor for retroactive benefits. Such benefits have historically not been permitted in the WIC Program, as discussed below in section 16 of this preamble. Further, prior to disqualifying any participant, the individual has the right to due process and a right to a fair hearing, as required by WIC regulations. We believe that the proper balance is to permit the continuation of benefits until a hearing decision is rendered, until the current certification period expires, or until categorical eligibility expires, whichever occurs first. Should the appeal be denied, a participant would be subject to a disqualification for up to one year, as well as a claim for the value of all benefits based on fraud, consistent with § 246.12(u). Therefore, the continuation of benefits prior to the appeal decision would not protect the

participant from the consequences of the fraudulent conduct.

Therefore, in § 246.9(g) in this final rule, the provision remains as proposed.

13. Technical Amendment (§ 246.11(c)(5))

This final rule makes a technical amendment to § 246.11(c)(5). In § 246.11(c)(5), we have changed the cross references to several paragraphs. References to paragraphs (c)(8), (d), and (e) have been changed to paragraphs (c)(7), (d), and (e).

14. Closeout Procedures (§§ 246.12(f)(2)(iv), 246.12(q), and 246.17(b)(2))

In response to a Congressional directive contained in a report accompanying the Fiscal Year 1999 appropriations, (H. Rept. 825, 105th Cong., 2nd sess. (1998)), the Department proposed to reduce the timeframe for reporting closeout data for each reporting month from 150 to 120 days. The Department proposed to achieve the 120-day closeout cycle by reducing the time allowed for vendors to bill State agencies from 90 to 60 days from the first valid date of the food instrument. Efforts to get State agencies to voluntarily reduce the time used to report closeout data to 120 days have been underway for more than a decade. Currently, about 55 percent of State agencies voluntarily report closeout data at 120 days or less.

Of the 20 comments received, 12 supported and 8 opposed the proposed reduction to a 120-day closeout cycle. Concerns raised by two supporters as well as those opposing were that State agencies not already reporting closeout data within 120 days would need to reduce the time allowed for vendors to redeem food instruments, reprogram automated systems, and renegotiate the terms and cycles of support from centralized State and local accounting departments.

About 84 percent of State agencies have already reduced the redemption period for vendors from 90 to 60 days. Therefore, a provision requiring this reduction would impose a burden on vendors or State agencies. Over 65 percent of State agencies that require their vendors to redeem food instruments in 60 days have, in turn, used the reduced redemption period to achieve a 120-day closeout cycle. A 60-day redemption period benefits vendors with timely payments as well as provides State agencies with the opportunity to achieve a timely closeout.

Regarding the other issues raised, voluntary compliance with a 120-day closeout cycle by approximately 55 percent of State agencies demonstrates that all State agencies should be able to close out within 120 days without great difficulty. The Department maintains that advances in automated systems technology should readily provide timely data needed to improve the budgeting and funding process.

However, the Department agrees State agencies will need time to take the necessary actions. The proposed reduction to a 120-day closeout cycle remains, but with an implementation date of October 1, 2006 (Federal Fiscal Year 2007).

15. Penalties for Misuse or Illegal Use of Program Funds, Assets, or Property (§§ 246.12(h)(3)(xx) and 246.23(d))

Section 104(b) of Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, enacted October 31, 1998, amended section 12(g) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(g), by increasing the maximum penalty for misuse or illegal use of funds, assets or property of a grant or other assistance under the NSLA, with a value of $100 or more, from $10,000 to $25,000. As set forth in section 12(g) of the NSLA, the maximum penalty also applies to programs under the CNA.

This change is nondiscretionary, and does not require that the public have an opportunity to comment. Therefore, in accordance with section 12(g) of the NSLA, the Department is amending §§ 246.12(h)(3)(xx) and 246.23(d) of the WIC regulations to reflect the increase in the maximum fine from $10,000 to $25,000, for misuse or illegal use of funds, assets or property of a grant or other assistance under the CNA, with a value of $100 or more.

16. Prohibition Against the Use of Program Funds To Provide Retroactive Benefits (§ 246.14(a))

The Department proposed to specify in regulations that WIC Program funds may not be used to provide retroactive benefits to participants. This has been long-standing policy in the WIC Program, but the regulations have not previously addressed this policy. The WIC food package is designed to be consumed during specified periods when participants are undergoing critical growth and development. Providing retroactive benefits is not an effective use of program benefits.

Commenters overwhelmingly supported this provision. The few commenters opposing the provision stated that providing retroactive benefits is the only fair way to remedy wrongful denial of benefits. We do not support this position. As noted previously, a participant may protect current benefits by requesting a hearing within 15 days of the advance notice of disqualification, which will guarantee the continuation of benefits until a hearing decision is rendered, expiration of the current certification period, or loss of categorical eligibility, whichever occurs first. Further, WIC benefits are intended to improve health status based on existing nutrition risk conditions at the time of application. Providing WIC foods to persons after they have passed through such periods is not consistent with the nutritional goals of the WIC Program, nor is it appropriate to give participants more food than they can reasonable consume within a given period of time.

If a hearing decision is rendered which supports the participant, then he/she will be provided benefits prospectively, assuming the certification period has not expired or the individual is no longer categorically eligible. We recognize that this process may occasionally result in a successful appellant having gone without benefits during the appeal process. However, the WIC Program is a supplemental nutrition program. Providing retroactive benefits in such cases is not an effective use of program benefits.

Another commenter indicated support for the proposed provision only if it would not prohibit providing a full month's benefits, instead of pro-rating benefits, for a participant who misses an appointment but subsequently visits the local agency before the expiration of the 30-day period. The commenter expressed concern about the cost of enhancing an automated system, which does not currently provide for pro-rating benefits. FNS encourages the pro-ration of benefits for participants whose eligibility is effective late in the monthly issuance cycle or who are late picking up food instruments. Also, as with similar concerns discussed in previous sections of this preamble, we believe that enhancements to automated systems are an effective solution for such issues. However, we do not intend to mandate pro-ration of the current month's benefits. We do not view the provision of WIC benefits late in the same month as constituting retroactive benefits. However, providing WIC benefits in a subsequent month, which are intended for a previous month, constitutes retroactive benefits.

Accordingly, in this final rule, the provision remains as proposed.

17. Transportation as Allowable Costs (§ 246.14(c)(7))

The Department proposed to amend § 246.14(c)(7) by removing the limiting term ''rural'' from the allowability of costs in transporting applicants and participants to clinics, so that the existing State agency option for funding transportation in rural areas could also be applied to urban and suburban areas. Also, the Department proposed revising § 246.4(a)(21) to require that a State agency which elects to allow the provision of transportation to participants must include its policy for approving such costs in the portion of the State Plan that describes the State agency's plans to provide program benefits to eligible persons most in need of such benefits.

Most of the commenters supported these proposed provisions. Some commenters stated that the proposed revisions would drain WIC nutrition services and administration funds (NSA), making WIC the source of funds for transportation of participants instead of Medicaid; create a welfare image for WIC; burden WIC with safety and liability issues; and, result in the transportation of non-WIC participants.

The Department proposed the aforementioned revisions because State agencies had been seeking approval to purchase vans for transporting participants to and from inner city and suburban clinics. Because State agencies could purchase vans with WIC NSA funds to bring WIC services to rural participants, it is reasonable to allow the use of WIC NSA funds for transportation of WIC participants to WIC clinic sites in any situation, rural or non-rural, where access is a barrier. At the same time, as noted in the preamble of the proposed rule, we were concerned with some of the same issues raised by commenters. As a result, we wanted to ensure that State agencies developed carefully structured rationales for use of NSA funds to transport participants. For this reason, we proposed revising the State Plan requirements of the regulations; a State agency would need to gain FNS approval for a State Plan amendment setting forth this rationale in order to use NSA funds for transporting participants. These safeguards are sufficient. Further, State agencies are not required to use NSA funds for transporting participants, urban or rural. Therefore, in this final rule, the provision remains as proposed.

18. Capital Expenditures Which Require Agency Approval (§ 246.14(d))

The Department proposed revisions to this section to reflect current rather than dated prior approval requirements for capital expenditures. In advance of the proposed rulemaking, changes in OMB Circular A–87 allowed FNS to establish and implement policy and guidance reducing the paperwork burden associated with obtaining prior approval of capital expenditures. FNS policy and guidance is the current source for specific dollar thresholds above which State agencies must obtain prior approval from FNS for capital expenditures, including automated information systems, and was referenced as such. FNS policy that deleted the requirement to obtain prior approval of management studies was also reflected in the proposal.

All but one commenter supported the proposed revisions. Considering the reference to FNS policy and guidance vague, the opponent recommended setting a dollar threshold of $10,000. An across-the-board threshold of $10,000 is more restrictive than that found in current FNS policy and guidance for all capital expenditures but those for automation, would increase the current paperwork burden, and may become dated by future revisions in government-wide rules. For these reasons, we did not accept the commenter's suggestion. The revisions remain as proposed.

19. Other Program Income (§ 246.15(b))

All comments supported using the addition method of applying program income, as proposed. The provision remains unchanged from the proposed rule.

20. State Audit Responsibilities (or Monetary Amount of the Food Not Received (§ 246.20(b)(1) and (b)(2))

The majority of comments fully supported the proposed revisions to this section. None opposed. However, a few supporters either did not fully understand the proposed revisions or expressed concern that the proposed revisions would result in changes to local agency audit requirements. Existing audit requirements remain unchanged by the proposed revisions. The revisions simply update this section to refer to government-wide audit requirements to which State and local agencies are already subject. State and local agencies are simply informed of their responsibility to obtain audits in accordance with Departmental regulations at 7 CFR 3052, which codifies the Office of Management and Budget (OMB) Circular A–133, Audits of States, Local Governments and Non-Profit Organizations.

A few comments expressed concern that local agencies might obtain program-specific audits. OMB Circular A–133 provides that a non-Federal entity, such as a local agency, operating only one Federal program may elect a program-specific instead of an organization-wide audit. However, most local agencies operate more than one Federal program and will, therefore, be required by OMB Circular A–133 to satisfy their audit requirement with an organization-wide audit. The revisions remain as proposed.

21. State Agency Reporting Requirements (§ 246.25(b) and (c))

Participation Reporting

The Department proposed revisions to this section to reflect data collections currently approved by OMB. Revisions to this section will not change current State agency reporting requirements.

The majority of commenters supported the proposed revisions. Seven commenters opposed the revisions in whole or part. All but one of the seven expressed concern that the proposed revision would require State agencies to report State appropriated funds. The proposed revision does not require reporting of State appropriated funds. There is no data element for State funds on Program reports and the data element for participation supported by State appropriated funds was removed beginning with fiscal year 2001. However, we believe that State agencies should voluntarily continue to inform FNS each year of their appropriations, i.e., provide the amount, period of availability, and purpose (food or nutrition services and administration (NSA)). The availability of State appropriated funds impacts and helps to explain Federal funding spending patterns.

Other items causing concern or opposed by at least one of the commenters included reporting and defining cash allowances and excess balances; whether monthly NSA expenditures include unliquidated NSA obligations; the meaning of itemized annual NSA expenditure reports; reporting a food cost/outreach NSA funds ratio; reporting available food and NSA by source year; and, suggesting the reporting of migrants each year rather than every other year.

Only two modifications were made to the proposed revisions. The remainder of the revisions remain as proposed. First, the reference to a requirement to report cash allowances and excess balances was deleted. An old requirement to report cash allowances and excess balances has long since been eliminated. Second, unliquidated obligations were added to the monthly

reporting of NSA expenditures. Data collections currently approved by OMB require State agencies to report NSA unliquidated obligations as well as expenditures.

Clarification is provided regarding the following reporting requirements. Annual reporting of itemized NSA expenditures refers to an existing requirement to report NSA expenditures by functional category on the FNS–798A. There is no requirement to report a food cost/outreach funds ratio and no such requirement was proposed.

Federal funds are currently reported by source year on line 29 (report year formula grant) and on lines 30a and 38b (funds spent forward from prior year or back spent from following year) and 30b and 38a (funds back spent to prior year and funds spent forward to following year) of the FNS–798. Such data is readily available.

The annual reporting of migrant data is required to meet the requirement of section 17(g)(4) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(g)(4), to make at least 9/10 of 1 percent available first for eligible members of migrant populations each year. Therefore, the existing annual migrant reporting requirement cannot be reduced to a biennial reporting requirement as it would be insufficient for monitoring compliance with the Act.

Racial/Ethnic Group and Local Agency Reporting

Most commenters supported the proposed revisions. Several commenters opposed reporting local agency changes as they occur. However, the current data collection for the local agency directory (FNS–648), which was initially approved by OMB in 1992, requires local agency address changes to be reported as they occur.

Current technology only provides for an annual publication of the directory. However, future automated systems upgrades will make it possible for State agencies to directly enter and access local agency address changes via an on-line Web-based local agency directory. The new technology will be very user-friendly, making updates easy.

Currently, many State agencies are not providing local agency updates until FNS pursues them as part of the annual local agency directory publication activities. However, the final rule should reflect the terms of the OMB approved data collection and the capabilities of future technology upgrades.

22. Confidentiality of Participant Information (§ 246.26(d) Through(i))

The Department proposed to revise § 246.26(d) and (g) of the current WIC regulations, and to add paragraphs (h) and (i) to § 246.26, to address the use and disclosure of confidential information. The Department proposed these changes in order to remove barriers to coordination among programs caused by restrictions on sharing participant information, and to provide regulatory clarification and guidance on legal issues pertaining to the release of confidential applicant and participant information in connection with court proceedings, criminal investigations, or instances of known or suspected child abuse or neglect. WIC agencies continue to be accountable to all applicable requirements pertaining to the confidentiality of information.

As clarified in the preamble to the proposed rule, confidential applicant and participant information could only be used or disclosed to the extent permitted by these proposed provisions. Any other use or disclosure would not be permitted. Additionally, information obtained from WIC applicants or participants would be protected, in accordance with WIC regulations, regardless of the manner in which the information is recorded or stored, with access limited to those that have a need to know and shared only as permitted under these regulations.

The additional flexibility in the proposed rule was intended to maintain a balance between sharing information in the interest of enhanced services and safeguarding information so that barriers to Program participation are not created. We are fully committed to the principle that the integration of health care and social service programs must proceed with careful regard for an individual's right to privacy.

A. Treatment of Confidential Applicant and Participant Information

The Department proposed in 246.26(d)(1) to expand the concept of confidential applicant and participant information to include all information about applicants and participants, including information obtained from other sources, as well as information generated as a result of WIC application, certification, or participation. The majority of commenters overwhelmingly supported this proposed clarification.

One supporting commenter, however, recommended that in order to avoid confusion, the regulations should specify that in protecting the confidentiality of applicant and participant information in WIC files, WIC local agencies must comply with WIC regulations and applicable federal statutes, not the U.S. Department of Health and Human Services' (HHS) regulations implementing the Health Insurance Portability and Accountability Act (HIPAA). We agree with the commenter and have clarified this point in the final regulatory provision 246.26(d)(1).

As set forth in WIC regulations, WIC State and local agencies are required to comply with the regulations, instructions and other guidelines issued by the Department, including those focused on the protection of applicant and participant confidentiality. Applicant or participant information contained in WIC files may include information that originated in other federal, state or local program's files, which was subject to those respective programs' confidentiality provisions. However, once information is included in WIC's files, WIC confidentiality protections attach to the information, regardless of the original source and exclusive of previously applicable confidentiality provisions. Thus, WIC confidentiality protections, rather than HIPAA requirements or any other Federal, State or local programs' confidentiality provisions, attach to and take precedence in protecting applicant and participant information.[1]

Health departments, which operate many WIC local agencies, are affected by HIPAA requirements. In those instances and pursuant to HIPAA regulations, health departments may declare themselves ''hybrid entities''. Covered entities within a health department would then comply with HIPAA regulations, while the WIC local agency, as a non-covered entity, would continue to follow existing, applicable confidentiality requirements. Coordination of programs and services can continue, even when program confidentiality requirements differ.

We encourage State and local agencies to consult first with their legal counsel on issues regarding confidentiality, including issues pertaining to HIPAA. State agencies are encouraged to contact appropriate FNS Regional offices for

[1] HHS' HIPAA regulations establish standards to protect the privacy of individually identifiable health information and those standards apply to information maintained by health plans, health care clearinghouses and certain health care providers. In the preamble to the initial final rule published in the **Federal Register** by HHS on December 28, 2000, at 65 FR 82462, and in subsequent questions and answers issued by HHS on the HIPAA rules, respectively, HHS clarified that WIC agencies are not considered ''health plans'' for HIPAA purposes and that the HIPAA standards do not extend to WIC agencies.

assistance should unresolved issues remain after consultation.

Therefore, the final rule remains as proposed, with the addition of clarification that WIC confidentiality protections in relevant Federal and State authorities attach to applicant and participant information, regardless of the original source of that information and exclusive of previously applicable Federal, State or local confidentiality provisions.

B. Use in the Administration and Enforcement of the WIC Program

The proposed provision sought to clarify in regulations those entities involved in the administration and enforcement of the WIC Program, by identifying the persons to whom confidential applicant/participant information may be disclosed based on their direct connection with the administration and enforcement of the WIC Program. The proposed provision clarified that such persons must have a need to know the confidential information for WIC Program purposes as determined by the State agency. Also, the provision clarified that such persons may include the staff of the State agency's local agencies, the staff of other State agencies and their local agencies, persons under contract with the State agency to conduct research concerning WIC, and persons investigating and prosecuting WIC Program violations under Federal, State, or local law.

All of the commenters were supportive of this proposed provision, although additional clarification was requested concerning the types of staff encompassed by the provision, and also concerning the meaning of the term ''need to know.''

The preamble of the proposed rule pointed out that all employees of a State or local agency do not need access to confidential participant information. In using the term ''need to know,'' we did not intend to introduce a new requirement, but rather to reinforce the requirement in the current regulations restricting access to staff directly connected with the administration or enforcement of the WIC program. Moreover, the listing in the provision of functions demonstrating a need to know was not intended to be all-inclusive, but rather to be illustrative. It is not possible to anticipate and list all of the staff positions or functions involved with administration and enforcement of the WIC Program. We agree, however, that the regulations should clearly indicate that the list of persons that have a need to know is not limited to those referenced in the regulations.

This specific listing is not necessary in the regulations. Instead, State agencies must apply the general principles provided by the regulatory language, in consultation with legal counsel. For instance, one commenter sought the specific inclusion of information technology staff. We recognize that such staff may be directly involved in the administration and enforcement of the program and have a need to know confidential participant information, but not necessarily all such staff. For example, it might be necessary for some technology staff to see confidential information when they are conducting data runs on WIC information or to assist WIC staff with computer equipment problems. However, it is unlikely that technology staff assigned to provide support and assistance only to other specified programs, and not WIC, would need such access. As indicated above, each State agency must define who is authorized access in accordance with general principles set forth in WIC regulations, in consultation with legal counsel.

We also did not intend to exclude State contract staff who are conducting audits of the WIC Program pursuant to 7 CFR part 3052, the Department's regulations implementing the Single Audit Act. Such staff would be considered as involved in the administration or enforcement of the program, and would need access to confidential information if, for instance, they want to sample certification records to ensure that income eligibility determinations have been correctly calculated during certifications. Likewise, staff of a bank under contract with a WIC State agency for food instrument processing will see the names of participants on WIC checks, and have a justifiable need to know. Contract terms and conditions should address the confidentiality of WIC information and the penalties for unauthorized sharing or access. Such contract entities perform programmatic functions on behalf of the WIC agencies and have a need to access confidential WIC information under the terms and conditions of the contract.

Another commenter suggested that the provision specifically allow for the disclosure of confidential participant information, without consent, to prevent multiple enrollments. Such a general statement is not needed since the term ''administration and enforcement of the WIC Program'' clearly encompasses the prevention of dual participation or multiple enrollments. The proposed rule clarified that individuals who have a need to know include personnel from local agencies and other WIC State or local agencies. As pointed out in the preamble of the proposed rule, this clarification was needed to facilitate the transfer of participants from one State agency or local agency to another and for program oversight; clearly, the term ''program oversight'' includes the prevention of dual participation. Thus applicant or participant consent is not needed for sharing confidential applicant or participant information between State or local agencies regarding the prevention or detection of multiple WIC enrollments as well as regarding the transfer of participants between State or local agencies. Such consent is not needed for sharing confidential information for any purpose properly within the meaning of the term ''administration and enforcement of the WIC Program,'' when the information is provided to staff with a need to know. With regard to sharing information with the Commodity Supplemental Food Program (CSFP) to detect or prevent dual participation, and/or for other coordination reasons, WIC and CSFP are required to enter into a written agreement.

Finally, as set forth in §§ 246.25(a)(4) and 246.26(g), the State agency must provide the Department and the Comptroller General with access to all records. The use of the term ''Department'' includes the Department's Office of Inspector General (OIG) and other USDA agencies or offices involved in the program such as FNS, and the Economic Research Service which is involved in conducting studies of the WIC Program. The Comptroller General is the head of the Government Accountability Office (GAO), which is an arm of Congress. The reference to the Comptroller General also includes other GAO staff such as those who conducted the previously mentioned survey on participant and employee fraud and abuse.

In general, confidential participant information may be used in connection with the appeal of adverse action taken against State or local WIC personnel. However, prior to such release, legal counsel should be consulted to provide advice on ways to share information with those that have a need to know while also protecting the confidentiality of information to those who do not have a need to know, *e.g.,* the judge could see the information but not the general public attending the hearing.

Accordingly, these provisions remain as proposed, except we have clarified in the final rule that the list of persons that have a need to know is not limited to those referenced.

C. Use and Disclosure for Non-WIC Purposes

The Department proposed to allow State agencies greater flexibility in determining organizations to which they may disclose confidential applicant/participant information pursuant to written agreements as well as the permissible uses of such information. Specifically, the Department proposed in § 246.26(d)(2) to remove the reference to sharing confidential WIC information only with public organizations that administer ''health or welfare'' programs that serve WIC participants. As proposed, this change would provide State agencies with greater latitude in choosing appropriate programs with which to coordinate and share information. Additionally, proposed § 246.26(h)(3)(i) would expand the permitted uses of confidential applicant/participant information to add three new categories. As proposed, the three new categories of permissible uses were:

- Enhancing the health, education, or well-being of WIC applicants or participants;
- Streamlining administrative procedures in order to minimize burdens on staff and applicants or participants; and
- Assessing and evaluating a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

Currently, State agencies choosing to disclose applicant/participant information to public organizations designated by the chief State health officer must execute a written agreement with each agency. The agreement must limit the use of the information by the receiving agency to establishing eligibility for their own programs and conducting outreach for such programs. Further, the organizations must assure that WIC applicant/participant information will not be disclosed to a third party. Also, § 246.7(i)(9) in current regulations requires State agencies to inform WIC applicants on the WIC certification form that information they provide may be disclosed to public organizations that administer other health or welfare programs for purposes of determining eligibility and conducting outreach.

However, as a balance to the proposed expansion, the Department also proposed a new § 246.4(a)(24) that would require State agencies to include in their State Plan a list of the programs with which the State agency or its local agency has or intends to execute written agreements for the disclosure and use of confidential applicant/participant information and planned use of the information, consistent with the uses authorized in proposed § 246.26(d). In addition, the proposed rule included a cross-reference to the State plan requirement in proposed § 246.26(h)(3).

These changes were proposed as a result of State agency comments and concerns that they needed greater flexibility to share confidential information for administrative purposes and to benefit applicants and participants. Additional flexibility would eliminate, for example, barriers to coordination, enhance one-stop shopping by applicants who could apply for multiple programs, and improve access to other programs and services available to the population served by the WIC Program.

The proposed rule also clarified in § 246.26(d)(2) and (h)(3) that the conditions for disclosing confidential applicant/participant information would extend to non-WIC uses of the information by the State agency and its local agencies. In these cases, the written agreement would be between the WIC State agency or local agency and the unit of the WIC State agency or local agency that would be using the information for non-WIC purposes. Further, the rule proposed to require a written agreement in these instances because the State or local agency personnel who would be using the information for non-WIC purposes might be unfamiliar with the limits on the use of the information. Requiring a written agreement in these cases would provide an additional safeguard for sensitive information.

As noted above, the proposed regulations continued the existing requirement that State agencies notify applicants and participants at the time of application or through a subsequent notice that information about their participation in the WIC Program may be used by State and local WIC agencies and public organizations in the administration of their programs that serve persons eligible for the WIC Program. Such notification would also be required when information is shared through written agreements for non-WIC purposes under §§ 246.7(i)(11) and 246.26(h)(2) of the proposed rule.

The majority of commenters supported the proposed provisions. Many commenters that supported the proposed provisions requested clarification or changes to certain portions of the proposal. Several commenters suggested a requirement for State agency oversight of local agency agreements. However, such a provision is unnecessary. Current regulations at § 246.26(h)(1) specify that the chief State health officer (or in the case of an Indian State agency, the governing authority) is required to designate the public organizations with which WIC agencies can enter into written agreements. The proposed rule reflects our intent to continue this requirement by further refining the provision. It would require the chief State health officer to designate in writing the permitted non-WIC uses of confidential WIC information and the names of the organizations with which such information will be shared. Therefore, State agency oversight of local agency agreements currently exists and is intended in the proposed rule.

Several commenters that supported the rule suggested that the term ''public organizations'' be defined to include Federal, State and local agencies and other government/tribal authorities. In general, this is the intended meaning of the term. It has never been the intent of the Department for State agencies to interpret this term so narrowly as to consider only State agency entities. However, as discussed below, this term is not intended to be interpreted broadly, for example, to include State or local law enforcement agencies. We do not believe, however, that the regulations should specifically define the term. Such action could potentially exclude or restrict State agency flexibility for the chief State health officer to identify and designate public organizations that may be appropriate to share WIC information. State agencies are encouraged to consult with legal counsel as they attempt to identify public organizations that they consider sharing confidential WIC information.

Several commenters that supported the provisions, as proposed, requested clarification on the extent to which independent researchers conducting general scientific research would be authorized to have access to confidentiality WIC information. This rule maintains the Department's longstanding position that independent researchers would not be considered public organizations. Therefore, confidential WIC information could not be shared with such entities through information-sharing agreements. The options for sharing WIC information with such researchers would be either through signed release forms from applicants and participants, or providing aggregate data, with no confidential identifiers.

A number of supportive commenters requested clarification on the permissibility of a public organization that receives WIC information through an information-sharing agreement to re-disclose such information to its

outreach contractors. We do not view such action as a re-disclosure of WIC information, but rather using the information in the administration and operation of its program, via the use of contractors, to identify potential individuals eligible for services provided by the organization. Therefore, such uses of WIC information would be permissible and not viewed as disclosing the information to a third party.

Other clarifications and suggestions by commenters supporting the proposed provisions covered a broad array of issues. Therefore, the following statements are intended to respond to most of these issues with respect to this final rule. WIC agencies are not required to enter into information-sharing agreements with public organizations and take on any added burden by this process. This is only one of several options for possible sharing of confidential WIC information. However, there are ways to limit the amount of paperwork involved in written agreements in some situations. For example, FNS Instruction 800–1 states that separate agreements do not have to be executed for each program. Instead, the chief State health officer (or his equivalent) may list in one agreement all of the programs with which information is to be disclosed. Responsible officials for each of the programs listed would then sign the written agreement.

Another option for sharing confidential WIC information is obtaining signed release forms from applicants and participants, or sharing information in aggregate, with no identifiers. If signed release forms are used, applicants and participants must be given the right to refuse to the sharing of information. FNS Instruction 800–1 provides guidance on this issue.

WIC agencies are in the best position to determine which option(s) are best suited to their needs. Therefore, it would be inappropriate to mandate only one approach to sharing WIC information with other entities. Further, State agencies have the authority to decide what WIC information will be shared with other public organizations. It is not our intent for State/local agencies to share all WIC information about applicants and participants with other organizations, but rather only those data elements necessary for the receiving organization to, for example, contact the individual regarding potential services. Therefore, WIC agencies already have the authority to protect and not disclose highly sensitive WIC information such as that relative to AIDS/HIV and substance abuse.

The provisions pertaining to information-sharing agreements were not designed to permit an applicant or participant to refuse such sharing. It was designed to be a part of the WIC application process. By signing the rights and responsibilities statement and agreeing to participate in WIC, the individual agrees to the sharing of information with other public organizations that may provide needed services. Therefore, no additional applicant or participant consent is necessary for such information sharing.

The proposed State Plan provision for listing all programs that have information-sharing agreements with the State agency and its local agencies, and the uses of such information, are only intended for informational purposes. As proposed, FNS did not intend to approve State agencies' decisions in this matter as long as the reasons for sharing information were consistent with the authorized uses in the proposed rule. Therefore, State and local agencies can execute such agreements prior to submission of the information in State Plans. Any questions or issues about the appropriateness of sharing information should be directed to the respective FNS Regional office prior to execution of the agreement.

The process of providing a list to FNS is not intended to create a barrier to entering into information-sharing agreements. Further, such lists are not intended to serve as notice to WIC applicants and participants. State agencies are required to provide applicants and participants with notification at certification of public organizations that WIC intends to share confidential WIC information.

Several supportive commenters also requested clarification on the proposed provision that permits WIC agencies to enter into information-sharing agreements with Child Protective Services (CPS) to report known or suspected child abuse or neglect not otherwise required by State law. One commenter questioned whether WIC agencies can also share information based on inquiries from CPS to follow up on information received from other sources. Under this final rule, an information-sharing agreement between WIC and CPS, if a WIC agency is contacted by CPS to check its records for possible abuse and neglect, it may respond to CPS' inquiry.

A few commenters opposed the proposed provisions. One reason for opposition included an objection to the prohibition on the public organization receiving confidential WIC information to disclose it to a third party. The commenter stated that this precludes sharing with immunization registries, and recommended such sharing be permitted. However, we are committed to maintaining the confidentiality of applicant/participant information as programs coordinate services and share information, although the task becomes more challenging. One way to control the access of confidential information while promoting coordination is through the use of a written agreement between programs, specifying what data will be shared, how it will be shared, whether data may be subsequently disclosed, and the proposed use(s) of such information. With regard to most immunization registries, WIC agencies currently have the authority to share information with organizations administering immunization registries. WIC agencies may share confidential WIC information by obtaining written release forms from applicants and participants, and individuals can be informed about potential subsequent release of their information.

One commenter recommended deleting the proposed reference to executing written agreements for the purpose of streamlining administrative procedures in either the receiving program or WIC. Coordination among programs and ''one-stop shopping'' for applicants to access multiple programs' benefits has increased. This provision is intended to facilitate coordination of services among programs and minimize or eliminate duplication of efforts; thus, the reference to streamlining administrative procedures.

One commenter opposed the permissible use of sharing information to enhance the health, education or well-being of WIC applicants or participants, as set forth in the proposed rule. The commenter felt this provision was too broad. However, the intent of this provision was to provide State agencies with the flexibility to identify and designate programs with which to share information in order to truly benefit the WIC population. For example, State or local agencies could elect to enter into one written agreement with programs in the health department, including their Communicable Disease Program, to share confidential WIC information. In consultation with its legal counsel, we believe State agencies are in the best position to make these determinations. The purposes for sharing were expanded to accommodate State agencies' concerns that current purposes were too restrictive.

As indicated in the proposed rule, the Department is committed to maintaining the confidentiality of the financial and health information of WIC applicants

and participants. The Department understands that individuals may refuse to apply or participate in the WIC Program if they fear that their privacy will not be safeguarded.

Therefore, the provisions set forth in § 246.26(h) of the proposed rule pertaining to sharing of WIC information for non-WIC purposes and entering into information-sharing agreements remain as proposed.

D. Child Abuse and Neglect Reporting

Encouraged by the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a), many States have enacted statutes requiring the reporting of known or suspected child abuse or neglect. Under current WIC policy, if a State statute requires known or suspected child abuse or neglect to be reported, then WIC staff must report or release applicant/participant information to State or local officials, as required by State law. In the proposed rule, we sought to codify current policy, as set forth in FNS Instruction 800–1. Currently, if State law does not require the reporting of known or suspected child abuse and neglect by public programs, such as WIC, the guidance in FNS Instruction 800–1 encourages WIC State agencies to consult with State legal counsel to determine the appropriateness of reporting such information. In the proposed rule at § 246.26(h)(3)(i)(C), State agencies are provided the option to report known or suspected child abuse or neglect when not mandated by State statute if a written agreement has been executed between the WIC State or local agency and the appropriate child protective service organization.

All of the comments supported these proposed provisions, although some revisions or clarifications were requested. Several commenters requested that we clarify in the regulatory language that the participant's consent is not needed by the local agency in order to provide such information to the appropriate child protective authority. We agree that a participant's written consent to share such information is not required. WIC agencies are reminded that FNS Instruction 800–1 provides specific guidance on the use of information-sharing agreements and addresses this issue.

One commenter requested that we address the impact of the Indian Child Welfare Act (25 U.S.C. 1902), stating that it addresses abuse and neglect and takes precedence over State law. Based on consultation with HHS, the Indian Child Welfare Act does not include requirements for reporting child abuse and neglect. This law deals with custody proceedings and the placement of Indian children in foster care.

One other commenter suggested that the term ''best interests of the program,'' introduced in the proposed rule regarding subpoenas and search warrants, may be applicable to the disclosure of confidential participant information for substantiating child abuse allegations made by a third party. We do not support this position. As indicated in the proposed rule, State law governs such disclosures.

Accordingly, in this final rule, the provisions pertaining to reporting known or suspected child abuse and neglect in § 246.26(d)(3) and (h)(3)(C) remain as proposed.

E. Release Forms

State agencies have requested latitude to allow medical information to be disclosed to private physicians and other health care providers treating WIC applicants and participants. The Department recognizes that increased flexibility by WIC agencies to share such information can be beneficial to the applicant or participant, as well as the requesting health care providers. As a result, the Department proposed in § 246.26(d)(4) to permit the use of release forms authorizing disclosure to the applicant or participant's physician(s) or other health care provider(s) at the time of application or certification for the WIC Program. However, as proposed, to underscore the voluntary nature of the release form, all other requests of the applicant to sign release forms to share WIC information would continue to be required to take place after the application and certification process is completed. In using release forms, WIC agencies should be aware that such policies must include the right of the applicant/participant to refuse to sign the consent without affecting eligibility for Program participation. Current policy and guidance on the use of release forms is in FNS Instruction 800–1.

Most of the commenters supported the proposed provision. Several commenters asserted that releases to parties other than health care providers should also be allowed at certification. One of these commenters recommended such release forms be a part of the certification form to eliminate the need for a second form; the commenter stated that the participant's use of the release form would in fact be voluntary. We do not support this recommendation. The presentation and execution of such releases are required after the WIC certification process is complete, *i.e.,* the applicant is determined eligible for WIC benefits, because to do otherwise may create a barrier to WIC participation. The participant may perceive that signing the release is a condition of WIC program participation. Presenting a release form to WIC applicants for signature for all purposes, except to share information with physicians or other health care providers, can occur during the certification visit but must occur after the determination of WIC eligibility. The release form to share information with physicians or other health care providers may be a part of or attached to the WIC certification form. However, release forms for all other purposes must be separate from the WIC certification form.

Therefore, the provisions pertaining to participant release forms in § 246.26(d)(4) in this final rule remain as proposed.

F. Access by Applicants and Participants

The proposed rule sought to codify in § 246.26(d)(5) the current policy requiring State and local agencies to provide applicants and participants access to the information they provide. In the case of an applicant or participant who is an infant or child, the State or local agency would be required to provide access to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship are resolved. Further, as proposed, State and local agencies would not be required to provide access to any other information concerning an applicant or participant, such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision that is being appealed by the applicant or participant pursuant to § 246.9.

All commenters supported the provisions as proposed. However, several of these commenters requested clarification such as the provision of guidelines for proof of custody, the provision of access by the parent or guardian of an infant or child who signed at certification, or whose signature is on file. All issues regarding custody and policy developed in this area must involve legal counsel since State law must be followed in handling such issues. Therefore, the provisions pertaining to applicant and participant access to WIC information at § 246.26(d)(5) in this final rule remain as proposed.

G. Access by the USDA and the Comptroller General of the United States

The proposed rule would have revised §§ 246.25(a)(4) and 246.26(g) to clarify that access to Program records by the Department and Comptroller General of the United States includes confidential applicant and participant information. However, the proposed rule prohibited any reports or other documents resulting from the examination of such records that are publicly released from including confidential applicant or participant information.

All of the commenters supported these proposed provisions, although one commenter requested that GAO and the Department's OIG be specifically referenced in the provision because both of these offices have become increasingly active in reviewing the program. This change is unnecessary since OIG is part of USDA and GAO is under the authority of the Comptroller General. Therefore, §§ 246.25(a)(4) and 246.26(g) in this final rule remain as proposed.

H. Subpoenas and Search Warrants

The Department proposed to add a new paragraph (i) to § 246.26 that would specify the procedures State and local agencies must follow in responding to requests from courts for confidential information pertaining to WIC applicants, participants, and vendors. The Department proposed to add these procedures to the WIC regulations in response to an increase in instances in which State and local agencies are presented with subpoenas or search warrants seeking confidential applicant and participant information. The Department proposed step-by-step procedures that State and local agencies, in consultation with legal counsel, would be required to follow in handling these requests. The proposed procedures were intended to create a basic, standard approach that emphasizes the importance of preserving confidentiality within the scope of the Federal regulations governing the WIC Program. At the same time, these procedures would protect WIC staff from adverse legal action for refusals to release confidential information.

Further, in § 246.6(i), the Department proposed to identify the situations in which State or local agencies must release information, for example, when served with a search warrant. As explained in the preamble to the proposed rule, if the State or local agency fails to comply in these situations, WIC staff may face adverse legal action, including imprisonment.

The proposed rule set forth different procedures for responding to subpoenas as opposed to search warrants in recognition of the differences between these legal documents. A subpoena is a written directive for information to be provided by an individual or entity. Generally, a subpoena directs an individual or entity to appear at a stated time and place and give information on a topic about which the individual or entity is knowledgeable. One type of subpoena is a subpoena duces tecum. A subpoena duces tecum is a written directive that orders the production and delivery of documents. Documents may be requested by type, e.g. all records for participants of a certain age and gender, or by topic, e.g., all documents which deal with immunization. The deadline for delivery, as well as the site for delivery, is generally specified. Search warrants are issued by the courts and are used by law enforcement officers to obtain information, and sometimes objects, from specific premises. Compliance with a search warrant is required at the time the search warrant is served.

The majority of commenters supported the provisions as proposed. However, some of these commenters also requested various clarifications or changes to some of the provisions. Some commenters felt that the provision was not clear that WIC agencies should protect participant confidentiality when served with a subpoena. The intent of the process set forth in the proposed rule is in fact to protect confidential WIC information. Therefore, consulting with legal counsel is set forth as one of the first steps. In general, subpoenas are merely requests for information and do not require the immediate surrender of information. On the other hand, failing to immediately comply with a search warrant could result in imprisonment of WIC State and local agency staff. Therefore, no change to the proposed process is necessary.

Several commenters requested clarification on whether State agencies would have sole or concurrent jurisdiction with local agencies to comply with subpoenas and search warrants. We believe that concurrent jurisdiction is warranted given that WIC State agencies are ultimately responsible for the administration and operation of the program within the State agency, including by its local agencies. Local agencies are under contract with the State agency to operate the program in accordance with Federal regulations. Therefore, State agencies should provide oversight authority for its local agencies in responding to subpoenas, search warrants and court orders.

As required in the proposed rule and this final rule, a local agency is required to notify its State agency when it is served with subpoenas and search warrants. This same policy should apply to court orders received by local agencies. In addition, copies of subpoenas, search warrants and court orders are considered records pertaining to WIC operations, and as such, must be retained on file by WIC agencies for a minimum of three years, as required by § 246.25(a)(2) of the regulations. In addition, such information provides documentation of action taken and supports the action to release confidential WIC information, if subsequent legal issues arise.

Several commenters requested that the regulations clarify access to WIC information by law enforcement officials. It would not be appropriate or necessary to include in the regulations an exhaustive list of all individuals that can or cannot access confidential WIC information. We can provide guidance in this preamble and through further guidance that FNS will issue to address a number of confidentiality issues raised by commenters on the proposed rule.

As set forth in current and proposed regulations, confidential WIC information can only be shared with individuals involved in the administration and enforcement of the WIC Program; through written agreement with public health organizations, and, as stated previously in this preamble, State agencies should not interpret this category to include law enforcement officials; through written consent from applicants/participants; and, in aggregate form. None of these options permit the sharing of confidential WIC information with law enforcement officials, except those involved in enforcing the WIC Program. Therefore, the avenue set forth in the proposed rule, which reflects current policy, is that such law enforcement officials must seek a court's decision to issue a subpoena or search warrant in order to access/attempt to access confidentiality WIC information. We believe the courts are in a better position to make determinations on whether such requests for information have merit and are warranted. As reflected in the proposed rule, even if a subpoena is issued by a court for WIC information, WIC agencies, or their representatives, have the right to argue their case before the courts and to clarify that WIC information must be kept confidential pursuant to Federal regulations. Ultimately, it is up to the courts to determine whether a specific

enunciated need to access such information overrides Federal requirements.

A number of commenters expressed concerns regarding quashing subpoenas, that is, appearing before a court to argue why confidential WIC information requested in a subpoena should not be released. Several commenters indicated that WIC agencies do not need to move to quash a subpoena if they informally convince the requesting party to withdraw the subpoena. We agree with commenters that in such a situation, moving to quash the subpoena would be mooted by its withdrawal. It would still be necessary for the State or local agency, in consultation with legal counsel for State or local agency counsel, to provide an appropriate response to the respective court in the matter. The language of the final rule is unchanged.

Other commenters were concerned with disclosing confidential information based on the best interest of the program. One commenter felt that this provision was too broad. Other commenters recommended that this standard be replaced to explicitly allow the disclosure of confidential information when participants verbally or physically abuse WIC staff or undertake any criminal activity on WIC premises. Again, when a subpoena is issued, we believe that WIC State agencies, in consultation with legal counsel, should have the flexibility to decide on a case-by-case basis whether the circumstances warrant release of the information, given the circumstances; that it is in the best interest of the program. As indicated in the preamble of the proposed rule, there may be rare instances in which a State or local agency in consultation with legal counsel could decide that disclosing confidential applicant or participant information would be in the best interest of the Program. Because requests arising from investigations of this caliber and seriousness are rare, we expect State and local agencies to conclude only infrequently that such disclosure is necessary. Therefore, this regulation cannot attempt to address all cases in which State agencies, or their representatives, should move to quash subpoenas or decide to disclose confidential information. State agencies and legal counsel should ultimately make these decisions on a case-by-case basis in conformance with State and Federal privacy requirements.

Beyond responding to subpoenas, WIC confidentiality rules do not prohibit WIC agencies from contacting law enforcement if applicants or participants become verbally or physically abusive to WIC staff or are suspected of stealing either WIC Program property or personal items from employees or other individuals. Legal counsel can assist State agencies in developing policies to follow in handling such cases, without breaching confidentiality. For example, a WIC employee could report to law enforcement what she/he knows about who may have taken a purse or WIC Program property, without providing information from the WIC record.

Several commenters requested that the regulations address the procedures to follow for responding to court orders to which they are not parties, and that along with subpoenas and search warrants, the same or similar steps should be followed. We agree with the commenter that the proposed procedures for responding to subpoenas and search warrants apply to those in which WIC is a direct or indirect party. As proposed, the regulations are general in their direction and intent on how to respond to subpoenas and search warrants, and do not specify that the procedures apply only when WIC is a direct party. Further, with regard to responding to court orders, State and local agencies should consult with its legal counsel on such matters. We anticipate that in most cases, State agencies will need to respond to court orders in a manner similar to the procedures for responding to search warrants.

The requirements in proposed Program regulations pertaining to subpoenas and search warrants are intended to clarify the primacy of Federal authority to limit disclosure of information in the interest of preserving the confidentiality of WIC applicant/participant information. In addition, the Department sought to communicate a national, uniform approach to disclosure of WIC records that will assist the courts in handling matters related to the confidentiality of Program information. Again, because of variation in State law, the Department sought to enunciate a regulatory framework that is sufficiently flexible to accommodate State laws in this area.

Accordingly, § 246.26(i) in this final rule remains as proposed, except that the entire section has been renumbered for clarity to include an introductory statement and two paragraphs.

23. Corrections to Program Information (§ 246.27)

This final rule makes technical revisions to § 246.27 to reflect address changes or corrections for the Southeast Regional Office and the Western Regional Office of the Food and Nutrition Service.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

■ For the reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.2:

■ a. Add new definitions of ''Electronic signature'', ''Employee fraud and abuse'', ''7 CFR part 3021'' and ''Sign or signature'', in alphabetical order;

■ b. Revise the definition of ''7 CFR part 3017''; and

■ c. Revise the definition of ''State''.

The revisions and additions read as follows:

§ 246.2 Definitions.

* * * * *

Electronic signature means an electronic sound, symbol, or process, attached to or associated with an application or other record and executed and or adopted by a person with the intent to sign the record.

Employee fraud and abuse means the intentional conduct of a State, local agency or clinic employee which violates program regulations, policies, or procedures, including, but not limited to, misappropriating or altering food instruments, entering false or misleading information in case records, or creating case records for fictitious participants.

* * * * *

7 CFR part 3017 means the Department's Common Rule regarding Governmentwide Debarment and Suspension (Non-procurement). Part 3017 implements the requirements established by Executive Order 12549 (February 18, 1986).

* * * * *

7 CFR part 3021 means the Department's Common Rule regarding Governmentwide Requirements for Drug-Free Workplace. Part 3021 implements the requirements established in section 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

Sign or signature means a handwritten signature on paper or an electronic signature. If the State agency chooses to use electronic signatures, the State agency must ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable Federal law and policy, and the confidentiality requirements in § 246.26.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

* * * * *

■ 3. In § 246.3, revise paragraphs (b) and (c)(2) to read as follows:

§ 246.3 Administration.

* * * * *

(b) *Delegation to the State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (7 CFR part 3016); governing nonprocurement debarment/suspension (7 CFR part 3017); governing restrictions on lobbying (7 CFR part 3018); and governing the drug-free workplace requirements (7 CFR 3021); FNS guidelines; and, instructions issued under the FNS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

(c) * * *

(2) The written agreement shall include a certification regarding lobbying and, if applicable, a disclosure of lobbying activities, as required by 7 CFR part 3018.

* * * * *

■ 4. In § 246.4:

■ a. Revise paragraphs (a)(11)(i) and (a)(11)(ii);

■ b. Add a sentence to the end of paragraph (a)(21);

■ c. Amend paragraph (a)(23) by adding the words ''in compliance with requirements in 7 CFR part 3021'' at the end of the sentence; and

■ d. Add new paragraphs (a)(24) through (a)(27).

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(i) Certification procedures, including:

(A) A list of the specific nutritional risk criteria by priority level which explains how a person's nutritional risk is determined;

(B) Hematological data requirements including timeframes for the collection of such data;

(C) The procedures for requiring proof of pregnancy, consistent with § 246.7(c)(2)(ii), if the State agency chooses to require such proof;

(D) The State agency's income guidelines for Program eligibility;

(E) Adjustments to the participant priority system (see § 246.7(e)(4)) to accommodate high-risk postpartum women or the addition of Priority VII; and,

(F) Alternate language for the statement of rights and responsibilities which is provided to applicants, parents, or caretakers when applying for benefits as outlined in § 246.7(i)(10) and (j)(2)(i) through (j)(2)(iii). This alternate language must be approved by FNS before it can be used in the required statement.

(ii) Methods for providing nutrition education to participants. Nutrition education will include information on drug abuse and other harmful substances. Participants will include homeless individuals.

* * * * *

(21) * * * The State agency will also describe its policy for approving transportation of participants to and from WIC clinics.

* * * * *

(24) A list of all organizations with which the State agency or its local agencies has executed or intends to execute a written agreement pursuant to § 246.26(h) authorizing the use and disclosure of confidential applicant and participant information for non-WIC purposes.

(25) The State agency's policies and procedures for preventing conflicts of interest at the local agency or clinic level in a reasonable manner. At a minimum, this plan must prohibit the following WIC certification practices by local agency or clinic employees, or provide effective alternative policies and procedures when such prohibition is not possible:

(i) Certifying oneself;

(ii) Certifying relatives or close friends; or,

(iii) One employee determining eligibility for all certification criteria and issuing food instruments or supplemental food for the same participant.

(26) The State agency's plan for collecting and maintaining information on cases of participant and employee fraud and abuse. Such information should include the nature of the fraud detected and the associated dollar losses.

(27) The State agency's Universal Identifier number.

* * * * *

■ 4. In § 246.5:

■ a. Revise the first sentence of paragraph (c)(1) and remove the last sentence; and

■ b. Revise paragraph (d)(2).

The revisions read as follows:

§ 246.5 Selection of local agencies.

* * * * *

(c) * * *

(1) The State agency will consider the Affirmative Action Plan (see § 246.4(a)(5)) when funding local agencies and expanding existing operations, and may consider how much of the current need is being met at each priority level. * * *

* * * * *

(d) * * *

(2) The State agency must, when seeking new local agencies, publish a notice in the local media (unless it has received an application from a local public or nonprofit private health agency that can provide adequate services). The notice will include a brief explanation of the Program, a description of the local agency priority system (outlined in this paragraph (d)), and a request that potential local agencies notify the State agency of their interest. In addition, the State agency will contact all potential local agencies to make sure they are aware of the opportunity to apply. If an application is not submitted within 30 days, the State agency may then select a local agency in another area. If sufficient funds are available, a State agency will give notice and consider applications outside the local area at the same time.

* * * * *

■ 5. In § 246.7:

■ a. Revise the heading of paragraph (c) and revise paragraph (c)(1);

■ b. Redesignate paragraph (c)(2) as paragraph (c)(3) and add new paragraphs (c)(2) and (c)(4);

■ c. Revise paragraph (d)(2)(iii);

■ d. Redesignate paragraph (d)(2)(iv)(C) as paragraph (d)(2)(iv)(D) and add a new paragraph (d)(2)(iv)(C);

■ e. Revise paragraph (e)(1)(vi);

■ f. In paragraph (e)(4)(vii), remove the second ''and,'' and remove the reference to ''paragraph (e)(1)(iii)'' and add in its place ''paragraph (e)(1)(vi).''

■ g. Revise paragraph (g)(1);

■ h. Revise paragraph (h);

■ i. Revise paragraph (i)(10) introductory text;

■ j. Revise paragraph (i)(11);
■ k. Revise paragraph (j)(2) introductory text;
■ l. Revise paragraph (l); and,
■ m. Remove paragraph (m), and redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p), respectively.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(c) *Eligibility criteria and basic certification procedures.*

(1) To qualify for the Program, infants, children, and pregnant, postpartum, and breastfeeding women must:

(i) Reside within the jurisdiction of the State (except for Indian State agencies). Indian State agencies may establish a similar requirement. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(ii) Meet the income criteria specified in paragraph (d) of this section.

(iii) Meet the nutritional risk criteria specified in paragraph (e) of this section.

(2)(i) At certification, the State or local agency must require each applicant to present proof of residency (i.e., location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster; a homeless individual; or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

(ii) For a State agency opting to require proof of pregnancy, the State agency may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but whose conditions (as pregnant) are not visibly noticeable and do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency should then allow a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation is not provided as requested, the woman can no longer be considered categorically eligible, and the local agency would then be justified in terminating the woman's WIC participation in the middle of a certification period.

* * * * *

(4) The certification procedure shall be performed at no cost to the applicant.

(d) * * *

(2) * * *

(iii) *Use of a State or local health care definition of ''Income''.* If the State agency uses State or local free or reduced-price health care income guidelines, it will ensure that the definitions of income (see paragraph (d)(2)(ii) of this section), family (see § 246.2) and allowable exclusions from income (see paragraph (d)(2)(iv) of this section) are used uniformly to determine an applicant's income eligibility. This ensures that households with a gross income in excess of 185 percent of the Federal income guidelines (see paragraph (d)(1) of this section) are not eligible for Program benefits. The exception to this requirement is persons who are also income eligible under other programs (see paragraph (d)(2)(vi) of this section).

(iv) * * *

(C) Loans, not including amounts to which the applicant has constant or unlimited access.

* * * * *

(e) * * *

(1) * * *

(vi) *Regression.* A WIC participant who is reapplying for WIC benefits may be considered to be at nutritional risk in the next certification period if the competent professional authority determines that the applicant's nutritional status may regress to the nutritional risk condition(s) certified for in the previous certification period without supplemental foods and/or WIC nutrition services, and if the nutritional risk condition(s) certified for in the previous certification period is/are appropriate to the category of the participant in the subsequent certification based on regression. However, such applicants shall not be considered at nutritional risk based on the possibility of regression for consecutive certification periods. Applicants who are certified based on the possibility of regression should be placed either in the same priority for which they were certified in the previous certification period; a priority level lower than the priority level assigned in the previous certification period, consistent with § 246.7(e)(4); or in Priority VII, if the State agency is using that priority level.

* * * * *

(g) * * *

(1) Program benefits will be based upon certifications established in accordance with the following timeframes:

A/an:	Will be certified:
(i) Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes six weeks old or the pregnancy ends (for example, if the infant is born June 4, six weeks after birth would be July 16, and certification would end July 31).
(ii) Postpartum woman	Up to the last day of the sixth month after the baby is born or the pregnancy ends (postpartum).
(iii) Breastfeeding woman	Approximately every six months. The State agency may permit its local agencies to certify a breastfeeding woman up to the last day of the month in which her infant turns 1 year old, or until the woman ceases breastfeeding, whichever occurs first.
(iv) Infant	Approximately every six months. The State agency may permit its local agencies to certify an infant under six months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
(v) Child	Approximately every six months ending with the last day of the month in which a child reaches his/her fifth birthday.

* * * * *

(h) *Mandatory and optional mid-certification actions.* Mid-certification actions are either mandatory or optional as follows:

(1) *Mandatory reassessment of income eligibility mid-certification.* (i) The local agency must reassess a participant's income eligibility during the current certification period if the local agency receives information indicating that the participant's household income has changed. However, such assessments are not required in cases where sufficient time does not exist to effect the change. Sufficient time means 90 days or less before the expiration of the certification period.

(ii) *Mandatory disqualification mid-certification for income ineligibility.* The local agency must disqualify a participant and any other household members currently receiving WIC benefits who are determined ineligible based on the mid-certification income reassessment. However, adjunctively-eligible WIC participants (as defined in paragraphs (d)(2)(vi)(A) or (d)(2)(vi)(B) of this section) may not be disqualified from the WIC Program solely because they, or certain family members, no longer participate in one of the other specified programs. The State agency will ensure that such participants and other household members currently receiving WIC benefits are disqualified during a certification period only after their income eligibility has been reassessed based on the income screening procedures used for applicants who are not adjunctively eligible.

(2) *Mandatory sanctions or other actions for participant violations.* The local agency must impose disqualifications, or take other actions in accordance with the procedures set forth in § 246.12(u), in response to participant violations including, but not limited to, the violations listed in the definition of *Participant violation* in § 246.2.

(3) *Optional mid-certification actions.* A participant may be disqualified during a certification period for the following reasons:

(i) A State agency may allow local agencies to disqualify a participant for failure to obtain food instruments or supplemental foods for several consecutive months. As specified by the State agency, proof of such failure includes failure to pick up supplemental foods or food instruments, nonreceipt of food instruments (when mailed instruments are returned), or failure to have an electronic benefit transfer card revalidated for purchase of supplemental foods; or

(ii) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to some certified participants. The State agency must explore alternatives (such as elimination of new certifications) before taking such action. In discontinuing benefits, the State agency will affect the least possible number of participants and those whose nutritional and health status would be least impaired by the action. When a State agency elects to discontinue benefits due to insufficient funds, it will not enroll new participants during that period. The State may discontinue benefits by:

(A) Disqualifying a group of participants; and/or,

(B) Withholding benefits from a group with the expectation of providing benefits again when funds are available.

(i) * * *

(10) A statement of the rights and obligations under the Program. The statement must contain a signature space, and must be read by or to the applicant, parent, or caretaker. It must contain the following language or alternate language as approved by FNS (see § 246.4(a)(11)(i)), and be signed by the applicant, parent, or caretaker after the statement is read:

* * * * *

(11) If the State agency exercises the authority to use and disclose confidential applicant and participant information for non-WIC purposes pursuant to § 246.26(d)(2), a statement that:

(i) Notifies applicants that the chief State health officer (or the governing authority, in the case of an Indian State agency) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes;

(ii) Must indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program; and,

(iii) Will be added to the statement required under paragraph (i)(10) of this section. This statement must also indicate that such information can be used by the recipient organizations only for the following:

(A) To determine the eligibility of WIC applicants and participants for programs administered by such organizations;

(B) To conduct outreach for such programs;

(C) To enhance the health, education, or well-being of WIC applicants and participants currently enrolled in those programs;

(D) To streamline administrative procedures in order to minimize burdens on participants and staff; and,

(E) To assess and evaluate a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

(j) * * *

(2) At the time of certification, each Program participant, parent or caretaker must read, or have read to him or her, the statement provided in paragraph (i)(10) of this section (or an alternate statement as approved by FNS). In addition, the following sentences (or alternate sentences as approved by FNS) must be read:

* * * * *

(l) *Dual participation.* The State agency is responsible for the following:

(1) In conjunction with WIC local agencies, the prevention and identification of dual participation within each local agency and between local agencies under the State agency's jurisdiction, including actions to identify suspected instances of dual participation at least semiannually. The State or local agency must take follow-up action within 120 days of detecting instances of suspected dual participation;

(2) In areas where a local agency serves the same population as an Indian State agency or a CSFP agency, and in areas where geographical or other factors make it likely that participants travel regularly between contiguous local service areas located across State agency borders, entering into an agreement with the other agency for the detection and prevention of dual participation. The agreement must be made in writing and included in the State Plan;

(3) Immediate termination from participation in one of the programs or clinics for participants found in violation due to dual participation; and

(4) In cases of dual participation resulting from intentional misrepresentation, the collection of improperly issued benefits in accordance with § 246.23(c)(1) and disqualification from both programs in accordance with § 246.12(u)(2).

* * * * *

■ 6. In § 246.9, revise paragraph (g) to read as follows:

§ 246.9 Fair hearing procedures for participants.

* * * * *

(g) *Continuation of benefits.* Participants who appeal the termination of benefits within the period of time provided under paragraph (e) of this section must continue to receive

Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, or participants who become categorically ineligible during a certification period (or whose certification period expires), may appeal the denial or termination, but must not receive benefits while awaiting the hearing.

* * * * *

§ 246.11 [Amended]

■ 7. In § 246.11(c)(5), remove the words ''paragraphs (c)(8), (d), and (e)'', and add in their place the words ''(c)(7), (d), and (e)''.

§ 246.12 [Amended]

■ 8. In § 246.12:

■ a. Amend paragraph (f)(2)(iv) by removing the words ''90 days'' wherever they appear and by adding in their place the words ''60 days'';

■ b. Amend paragraph (h)(3)(xx) by removing the reference to ''$10,000'' and by adding in its place a reference to ''$25,000''; and

■ c. Amend paragraph (q) by removing the words ''150 days'' and by adding in their place the words ''120 days''.

■ 9. In § 246.14:

■ a. Add a new sentence at the beginning of paragraph (a)(2);

■ b. Amend the first sentence of paragraph (c)(7) by removing the word ''rural''; and,

■ c. Revise paragraph (d).

The addition and revision read as follows:

§ 246.14 Program costs.

(a) * * *

(2) Program funds may not be used to pay for retroactive benefits. * * *

* * * * *

(d) *Costs allowable with approval.* The costs of capital expenditures exceeding the dollar threshold established in Agency policy and guidance are allowable only with the approval of FNS prior to the capital investment. These expenditures include the costs of facilities, equipment (including medical equipment), automated data processing (ADP) projects, other capital assets, and any repairs that materially increase the value or useful life of such assets.

* * * * *

■ 10. In § 246.15, revise the first sentence of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) * * * The State agency may use current program income (applied in accordance with the addition method described in § 3016.25(g)(2) of this title) for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous years or subsequent fiscal years. * * *

§ 246.17 [Amended]

■ 11. In § 246.17, remove the words ''150 days'' in paragraph (b)(2), and add in their place the words ''120 days''.

■ 12. In § 246.20:

■ a. Revise paragraph (b)(1); and,

■ b. Remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2).

The revision reads as follows:

§ 246.20 Audits.

* * * * *

(b) * * *

(1) State agencies must obtain annual audits in accordance with part 3052 of this title. In addition, States must require local agencies under their jurisdiction to obtain audits in accordance with part 3052 of this title.

* * * * *

§ 246.23 [Amended]

■ 13. In § 246.23, amend paragraph (d) by removing the reference to ''$10,000,'' and by adding in its place a reference to ''$25,000.''

■ 14. In § 246.25, revise paragraphs (a)(4), (b) and (c) to read as follows:

§ 246.25 Records and reports.

(a) * * *

(4) All records shall be available during normal business hours for representatives of the Department and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

(b) *Financial and participation reports.*

(1) *Monthly reports.* (i) State agencies must submit financial and program performance data on a monthly basis, as specified by FNS, to support program management and funding decisions. Such information must include, but may not be limited to:

(A) Actual and projected participation;

(B) Actual and projected food funds expenditures;

(C) A listing by source year of food and NSA funds available for expenditure; and,

(D) NSA expenditures and unliquidated obligations.

(ii) State agencies must require local agencies to report such financial and participation information as is necessary for the efficient management of food and NSA funds expenditures.

(2) *Annual reports.* (i) Every year, State agencies must report to FNS the average number of migrant farmworker household members participating in the Program during a 12-month period of time specified by FNS.

(ii) State agencies must submit itemized NSA expenditure reports annually as an addendum to their WIC Program closeout reports, as required by § 246.17(b)(2).

(3) *Biennial reports.* (i) *Participant characteristics report.* State and local agencies must provide such information as may be required by FNS to provide a biennial participant characteristics report. This includes, at a minimum, information on income and nutritional risk characteristics of participants, information on breastfeeding incidence and duration, and participation in the Program by category (i.e., pregnant, breastfeeding and postpartum women, infants and children) within each priority level (as established in § 246.7(e)(4)) and by migrant farmworker households.

(ii) *Civil rights report.* Racial and ethnic participation data contained in the biennial participant characteristics report will also be used to fulfill civil rights reporting requirements.

(c) *Other reports.* State agencies must submit reports to reflect additions and deletions of local agencies administering the WIC Program and local agency address changes as these events occur.

* * * * *

■ 15. In § 246.26, revise paragraphs (d) and (g) and add new paragraphs (h) and (i) to read as follows:

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.*

(1) *WIC purposes.*

(i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually

identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

(2) *Non-WIC purposes.* (i) *Use by WIC State and local agencies.* Any WIC State or local agency may use confidential applicant and participant information in the administration of its other programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(ii) *Disclosure to public organizations.* The State agency and its local agencies may disclose confidential applicant and participant information to public organizations for use in the administration of their programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(3) *Child abuse and neglect reporting.* Staff of the State agency and its local agencies who are required by State law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information without the consent of the participant or applicant to the extent necessary to comply with such law.

(4) *Release forms.* Except in the case of subpoenas or search warrants (see paragraph (i) of this section), the State agency and its local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The State or local agency must permit applicants and participants to refuse to sign the release form and must notify the applicants and participants that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

(5) *Access to information by applicants and participants.* The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision being appealed pursuant to § 246.9.

* * * * *

(g) *USDA and the Comptroller General.* The State agency must provide the Department and the Comptroller General of the United States access to all WIC Program records, including confidential vendor, applicant and participant information, pursuant to § 246.25(a)(4).

(h) *Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes.* The State or local agency must take the following steps before using or disclosing confidential applicant or participant information for non-WIC purposes pursuant to paragraph (d)(2) of this section.

(1) *Designation by chief State health officer.* The chief State health officer (or, in the case of an Indian State agency, the governing authority) must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

(2) *Notice to applicants and participants.* The applicant or participant must be notified either at the time of application (in accordance with § 246.7(i)(11)) or through a subsequent notice that the chief State health officer (or, in the case of an Indian State agency, the governing authority) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes. This statement must also indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program.

(3) *Written agreement and State plan.* The State or local agency disclosing the information must enter into a written agreement with the other public organization or, in the case of a non-WIC use by a State or local WIC agency, the unit of the State or local agency that will be using the information. The State agency must also include in its State plan, as specified in § 246.4(a)(24), a list of all organizations (including units of the State agency or local agencies) with which the State agency or its local agencies has executed or intends to execute a written agreement. The written agreement must:

(i) Specify that the receiving organization may use the confidential applicant and participant information only for:

(A) Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;

(B) Conducting outreach to WIC applicants and participants for such programs;

(C) Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by State law;

(D) Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC Program; and/or

(E) Assessing and evaluating the responsiveness of a State's health system to participants' health care needs and health care outcomes; and

(ii) Contain the receiving organization's assurance that it will not use the information for any other purpose or disclose the information to a third party.

(i) *Subpoenas and search warrants.* The State agency may disclose confidential applicant, participant, or vendor information pursuant to a valid subpoena or search warrant in accordance with the following procedures:

(1) *Subpoena procedures.* In determining how to respond to a subpoena duces tecum (i.e., a subpoena for documents) or other subpoena for

confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the subpoena, immediately notify its State agency;

(ii) Consult with legal counsel for the State or local agency and determine whether the information requested is in fact confidential and prohibited by this section from being used or disclosed as stated in the subpoena;

(iii) If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, attempt to quash the subpoena unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program. The determination to disclose confidential information without attempting to quash the subpoena should be made only infrequently; and,

(iv) If the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the subpoena and no other information; and,

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

(2) *Search warrant procedures.* In responding to a search warrant for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the search warrant, immediately notify its State agency;

(ii) Immediately notify legal counsel for the State or local agency;

(iii) Comply with the search warrant; and,

(iv) Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the search warrant and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

■ 16. In § 246.27, revise paragraphs (c) and (g) to read as follows:

§ 246.27 Program information.

* * * * *

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., room 8T36, Atlanta, Georgia 30303.

* * * * *

(g) Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

Dated: August 30, 2006.

Kate Coler,

Deputy Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix:

Regulatory Impact Analysis

Title: 7 CFR 246: Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Provisions

a. *Nature:* Final Rule.

b. *Need:* This final rule amends a number of existing provisions in the WIC program regulations to (1) address issues raised by WIC State agencies and other members of the WIC community; (2) address recommendations made by the United States Government Accountability Office (GAO); (3) incorporate certain longstanding program policies and State agency practices into the regulations; and (4) streamline certain requirements in the regulations.

In particular, this rulemaking streamlines the Federal requirements for financial and participation reporting by State agencies, and clarifies the requirements pertaining to the confidentiality of WIC information in order to strengthen coordination with public organizations and private physicians. It also incorporates longstanding program policies and State agency practices into the regulations regarding State agency responses to subpoenas and other court-ordered requests for confidential information. Other provisions in this final rule are designed to improve eligibility determinations, incorporating program policies and State agency practices that have been in effect for some time.

These changes are intended to reinforce program policies and State agency practices that strengthen services to WIC participants, improve program administration, and increase State agency flexibility in managing the program. Many of these provisions are options the State agency may choose to implement in operating the program.

c. *Affected Parties:* The parties affected by this regulation are the USDA–FNS, State and local WIC agencies, WIC participants, and potentially eligible applicants.

Cost-Benefit Assessment: Most of the provisions in this rule are generally economically insignificant to the costs or overall operations of the WIC program. Some of the provisions are already current practice in many states, while others are presented as optional changes at the State level. The potential effects of these provisions are highlighted in the accompanying table. As a whole, this rule serves to streamline program administration and clarify program requirements while minimizing economic and administrative burdens.

Two provisions in this final rule may have a notable financial impact; both are found within § 246.7 Basic Certification Procedures:

(1) Prohibits the use of ''possibility of regression'' for consecutive certifications and clarifies priority level requirements based on regression:

Currently, State agencies are not required to limit the number of certifications per participant based on regression, although some States do have limits in place. According to data from the 2002 WIC Program and Participant Characteristics (PC) report, a maximum of 0.9% of all WIC participants are certified based on regression as their sole nutritional risk. Assuming that this is a relatively constant proportion of participants over time, approximately 74,000 WIC participants were certified based on regression in 2004. According to PC data, children comprise a majority of the participants who are certified with regression as the sole nutritional risk. We do not have any data to indicate how many participants are recertified on this basis.

If each of those 74,000 participants was certified with regression as the only nutritional risk factor for more than one consecutive certification period, the food and administrative costs to the WIC program could reach as high as $3.8 million for one month. Assuming that all of these participants would be recertified for a six-month period, the proposed rule could save over $20 million and reduce participation by over 70,000 in the six-month period. However, given that ''possibility of regression'' is rarely used as a sole basis of nutrition risk, and that if they do regress, participants would become certified again, significant savings are unlikely.

(2) Provides states with the option to extend certification periods for all participant categories until the end of the last month; also provides option to extend breastfeeding woman's certification period up to the infant's first birthday or until the woman ceases to breastfeed:

Currently, states may extend a child's certification period through the last day of the month in which the six-month certification ends. Certification periods for all other participant categories must end on various dates throughout the month, depending on the initial certification date. This provision will give states the option to extend certification periods for all participant categories through the last day of the month in which the certifications end.

This extension is offered in order to streamline administrative procedures and make certification periods for the various participant categories more consistent. States may incur an initial expense if their MIS systems are not compatible with this change; reliable data is not currently available on how many states may choose this option and/or how many states may need MIS upgrades as a result.

As certification periods are extended, food costs naturally increase. According to 2002

WIC PC data, this extension would add an average of 15 days worth of food benefits for each woman or infant participant. For this analysis, the assumption was made that this increased cost would be realized only when participants exit the program. The nonchildren categories most likely not to recertify (thus exiting the program) include: breastfeeding women; postpartum, non-breastfeeding women; and about 31% of infants [1]. Therefore, the extra food package costs for breastfeeding women, postpartum/non-breastfeeding women, and 31% of infants (*i.e.*) the infants who do not recertify as children) were calculated based on PC 2002 participation data and current food package cost estimates. The annual cost for the additional supplemental food benefits (approximately 15 days per participant) to the three categories of participants mentioned above totals over $25 million. The actual cost will likely be much lower, as this total assumes that all State agencies will adopt this optional provision.

Currently, states may certify breastfeeding women for intervals of six months, until the breastfed infant's first birthday. This provision would give State agencies the option to extend the certification period for one full year. Since this provision is entirely optional, the number of states who would change their certification procedures is unknown. It is assumed that most women who continue to breastfeed longer than six months are already being recertified for the second six-month period; therefore this extended certification period is not likely to have a major impact on either program participation among breastfeeding women or on program costs.

Current rule	Proposed rule	Final rule	Final rule effects on:	State agencies	Local agencies	Participants
			USDA–FNS			
Sec. 246.2 Definitions.	Sec. 246.2 Definitions.	Sec. 246.2 Definitions.				
No current provision on electronic signatures.	Adds new definitions of "sign or signature" and "electronic signature"; State agencies may use electronic signatures if reliability and integrity assured.	Adds new definitions of "sign or signature" and "electronic signature" as proposed, but also adds "employee fraud and abuse" and "7 CFR part 3017" and "State.".	No effect	If electronic signatures are adopted, may assist with streamlining program operations and ease future transition to EBT. Several State agencies are already utilizing electronic signatures.	If electronic signatures are adopted, may reduce the burden of paper file storage in Local agency offices.	No effect.
Sec. 246.4(a) State Plan Requirements.	Sec. 246.4(a) State Plan Requirements.	Sec. 246.4(a) State Plan Requirements.				
No current provisions requiring State Plan amendments reflecting requirements of the new rule.	Technical requirements associated with changes described below.	Same as proposed and additional provisions on proof of pregnancy and universal identifiers; also added is language revising the proposed State Plan provisions on conflict of interest and separation of duties.	No effect	This provision will lead to a minimal increase in time necessary to revise the State plan. The increase will likely be a one-time event as state officials add the new provisions to the current State plan.	No effect	No effect.
Conflict of Interest ..	Sec. 246.4(a)(25) Conflict of Interest/Separation of Duties.	Sec. 246.4(a)(25) Conflict of Interest/Separation of Duties.				
No current provision, but 8/99 GAO report recommends policy on local agency staff conflict of interest.	Requires State agencies to implement policies and procedures to prevent conflicts of interest within local agency staffs, and to implement separation of duties.	Same as proposed and separation of duties clarified to permit a local agency employee to take part in the certification process and issue benefits if at least one other employee is involved in the process.	No effect	This provision may lead to an initial need for State officials to ensure that new rules are understood and are being implemented at the local level. Many State agencies already have a similar provision in place.	Compliance with this provision may require minor administrative/staffing changes at the local level. Many lcal agencies already have a plan for separation of duties and will not be affected.	No effect.

[1] Based on PC data and FNS administrative data from 1996–2002, approximately 31% of WIC infants do not recertify as children.

Current rule	Proposed rule	Final rule	Final rule effects on: USDA–FNS	State agencies	Local agencies	Participants
Participant/Employee Fraud/Abuse.	Sec. 246.4(a)(26) Participant or Employee Fraud and Abuse.	Sec. 246.4(a)(26) Participant or Employee Fraud and Abuse.				
No current provision, but 8/99 GAO report recommends data collection on participant and staff fraud/abuse.	Requires the State agency assurance of a system(s) in place at the local level to collect information on fraud/abuse by employees and participants.	Same as proposed; also, definition of "employee fraud and abuse" added, as noted above.	No effect	This provision may lead to a minor increase in administrative effort on the State level to incorporate the tracking of fraud/abuse into current data collection mechanisms. This increased effort may be counterbalanced by more efficient handling of fraud/abuse cases and ultimately streamline program administration.	This provision may lead to a negligible increase in administrative effort at the local agency, due to formal reporting requirements to the State. In most cases, local agencies are already reporting cases of fraud/abuse to the State agency.	No effect.
Sec. 246.5 Selection of New Local Agency.	Sec. 246.5 Selection of New Local Agency.	Sec. 246.5 Selection of New Local Agency.				
Requires States to fund new local agencies only in the order of need.	Deletes requirement for states to fund new local agencies only in the order of need.	Same as proposed.	No effect	The provision will enhance State agency flexibility in funding new agencies.	This provision may allow new local agencies to be authorized more readily.	This provision may expedite the availability of services to populations in areas where need exists, but not at the highest level.
Sec. 246.7 Basic Certification Procedures.	Sec. 246.7 Basic Certification Procedures.	Sec. 246.7 Basic Certification Procedures.				
State agencies may use State or local income guidelines instead of the Federal guidelines.	State agencies must use the WIC regulatory income and family definitions and exclusions.	Same as proposed.	This provision will assist in streamlining WIC funding paperwork at the Federal level, particularly in USDA–FNS Regional Offices.	This provision may initially increase administrative burden in State agencies that are not currently following these guidelines. Any initial burden is expected to be short-lived. Many State agencies are already following these guidelines and will experience no effect.	This provision may necessitate that a few local agencies adopt/learn new standards for income certification. Most local agencies are in states where these guidelines are already in effect; thus no effect is expected in those agencies.	This provision will promote equal consideration of applicant eligibility nationwide.
No current provision in regulations on short-term, non-secured loans.	Short-term, non-secured loans are added to the list of income exclusions.	Excludes loans to which the applicant does not have constant or unlimited access.	No effect	No effect	No effect	This provision may allow a minor increase in participant eligibility for program benefits.

Current rule	Proposed rule	Final rule	Final rule effects on: USDA–FNS	State agencies	Local agencies	Participants
No current provision on proof of pregnancy.	Provides State agencies the option to require proof of pregnancy.	Same as proposed except that proof may be required when the pregnancy is not visibly noticeable and no documentation of proof is available at certification.	No effect	This provision is optional for State agencies; thus some State agencies will experience no effect. For those State agencies choosing to adopt the provision, a minimal increase in effort may be necessary in providing guidance and monitoring the Local agencies.	Many Local agencies will experience no effect, since the provision is optional. If the provision is adopted at the state level, Local agencies may experience a minimal increase in time spent certifying pregnant applicants.	This provision will require pregnant applicants to the WIC program to provide proof of pregnancy, but only in States choosing to adopt this optional provision.
State agency not required to limit the number of certifications based on regression.	Prohibits the use of ''possibility of regression'' for consecutive certifications.	Same as proposed and priority levels clarified for certifications based on regression.	This provision could result in an estimated maximum decline of 0.9% of participation, equaling about 74,000 people. Given the 2004 average food and administrative cuts, this decline in participation could result in savings of approximately $20 million per year. Savings of this magnitude are highly unlikely, given the nearly impossible circumstances that must be met.	This provision will allow State WIC agency resources (funding, staff time) to be directed toward higher-risk participants. Many State agencies will experience no effect, since they already have this provision in place. Only about 0.9% (max.) of WIC participants are certified on regression, so an overall impact is relatively small.	This provision will allow Local WIC agency resources (funding, staff time) to be directed toward higher-risk participants. Many Local agencies will experience no effect since they already have this provision in place. Only about 0.9% (max.) of WIC participants are certified on regression alone, so an overall impact is relatively small.	This provision will limit benefits for WIC participants who do not maintain any nutrition risk factors beyond ''possibility of regression.''
Certification periods for some categories of participants—breastfeeding women and children—end at the end of a month; the certification periods for all other categories of participants may end at any time during a month, which may result in prorated benefits.	Certification periods for all participant categories are extended to the end of the last month.	Same as proposed and certification for breastfeeding women may be extended up to the infant's first birthday, or until the woman ceases to breastfeed, whichever occurs first.	These provisions will potentially increase annual program costs by over $25 million if every state chooses to extend benefits until the last day of the last month. These provisions are optional at the state level; thus the total financial impact may be limited.	These provisions will assist in streamlining program administration at the state level by providing State agencies the option to align certification periods for ease of tracking. States choosing to extend certification periods will experience increased food and administrative costs according to their caseloads.	If State agencies adopt these options, Local agencies will experience more streamlined certification procedures, due to the consistency of certification periods ending on the last day of the month. Local agencies will also not have to complete the paperwork necessary to recertify breastfeeding women at six-month intervals.	This provision relieves breastfeeding women of one recertification visit to the local WIC clinic. In addition, all participants may receive extra benefits, according to the proximity of their certification dates to the end of the month.

Current rule	Proposed rule	Final rule	Final rule effects on: USDA–FNS	State agencies	Local agencies	Participants
Requires disqualification if reassessment of program eligibility is conducted mid-certification.	Requires reassessment of income eligibility mid-certification based on new information, and disqualification if over-income.	Same as proposed, except that the reassessment is not required if sufficient time does not exist to effect the change; "sufficient time" means 90 days prior to the expiration of the certification period.	This provision has the potential to reduce total program costs nationally by not providing benefits to ineligible participants. However, the dollar amount saved is likely to be minimal, given the limited number of people affected.	This provision may assist State agencies with directing resources toward participants with a higher need, rather than providing benefits to participants who are ineligible. This provision may also lead to a minimal increase in administrative burden at the state level.	This provision may assist Local agencies with directing resources toward participants with a higher need, rather than providing benefits to participants who are ineligible.	This provision will reduce benefits for those participants who become ineligible based on an increased income; however, information regarding changes in income level would have to be brought to the attention of WIC staff.
State agency may not deviate from the mandated Participant Rights and Responsibilities language.	State agencies are permitted to use simpler language.	Same as proposed.	No effect	This provision is optional; many State agencies will experience no effect. For those states choosing to use more simple language, a small amount of time will be necessary initially to develop, test, and disseminate the language.	This provision will enable Local agencies to have flexibility in communicating Rights and Responsibilities to participants. Since the provision is optional, many Local agencies will experience no effect.	This provision increases the likelihood that more participants will have a full understanding of their Rights and Responsibilities.
246.9(g) Continuation of Benefits.	Sec. 246.9(g) Continuation of Benefits.	Sec. 246.9(g) Continuation of Benefits.				
Does not prohibit the continuation of benefits when a participant becomes ineligible while awaiting a hearing decision on other matters.	Prohibits participants who become categorically ineligible from continuing to receive program benefits while awaiting a hearing decision.	Same as proposed.	This provision may result in very minimal food cost savings at the national level. Reliable estimates of these savings are not available because of limited information on the number of participants affected.	This provision allows State agencies to direct resources to eligible participants, rather than participants who may not be actually be eligible to receive benefits.	This provision allows Local agencies to direct resources to eligible participants, rather than participants who may not be actually be eligible to receive benefits.	Participants who become ineligible while awaiting a hearing decision will no longer receive benefits.
Sec. 246.12(h)(3)(xx) & 246.23(d) Claims/Penalties.	Sec. 246.12(h)(3)(xx) & 246.23(d) Claims/Penalties.	Sec. 246.12(h)(3)(xx) & 246.23(d) Claims/Penalties.				
Maximum fine for criminal fraud is $10,000.	No revision proposed.	Maximum fine for criminal fraud raised to $25,000 per non-discretionary requirement of an amendment to the National School Lunch Act.	No effect	No effect	No effect	No effect.

Current rule	Proposed rule	Final rule	Final rule effects on: USDA–FNS	State agencies	Local agencies	Participants
Sec. 246.14 Use of Program Funds.	Sec. 246.14 Use of Program Funds.	Sec. 246.14 Use of Program Funds.				
No current provision on retroactive benefits.	Prohibits use of program funds to provide retroactive benefits to participants.	Same as proposed.	No effect	No effect is expected since it is not current practice to provide retroactive WIC benefits.	No effect	No effect.
Only allows use of program funds for transportation in rural area.	Allows use of program funds to provide transportation to and from WIC offices in non-rural as well as rural areas.	Same as proposed.	No effect	State agencies will need to balance Local agency requests for approval with the need for funds in other areas of program administration.	This provision will give Local agencies the flexibility to provide transportation to both urban and rural WIC clients, subject to prior approval of the State agency based on documentation that such service would be essential for program access.	This provision may allow greater access to WIC benefits for eligible persons in urban areas.
Sec. 246.14, 15, 17 Funding Issues.	Sec. 246.14, 15, 17 Funding Issues.	Sec. 246.14, 15, 17 Funding Issues.				
Sec. 246.14(d) requires prior approval for the costs of ADP systems and management studies.	Sec. 246.14(d) codifies the actual practice of deleting prior approval for costs of management studies. Continues the actual practice of requiring prior approval of capital expenditures exceeding the dollar threshold established in agency policy, including ADP.	Same as proposed.	This provision may decrease administrative burden by reducing time/paperwork involved in granting approval for the stated costs.	This provision may decrease administrative burden by reducing time/paperwork involved in requesting approval for the stated costs.	No effect	No effect.
Sec. 246.14(d) requires prior approval for capital expenditures over $2,500.	Dollar threshold for prior approval of capital expenditures is deleted from Sec. 246.14, designing FNS policy and guidance as the new reference for this, as per actual practice.	Same as proposed.	No effect, as FNS policy and guidance is current practice.	No effect, as FNS policy and guidance is current practice.	No effect	No effect.
Sec. 246.15(b) is currently silent on the addition method of applying program income, although 7 CFR 3016 allows this if stated in program regulations.	Sec. 246.15(b) codifies actual practice of using the addition method of applying program income.	Same as proposed.	No effect, as the addition method is current practice.	No effect, as the addition method is current practice.	No effect	No effect.

Current rule	Proposed rule	Final rule	Final rule effects on: USDA–FNS	State agencies	Local agencies	Participants
Sec 246.17 provides for a 150-day reporting cycle.	Sec. 246.17(b)(2) reduces food instrument close-out cycle from 150 to 120 days.	Same as proposed.	This provision will provide greater efficiency in financial administrative at the regional and national level.	This provision will provide greater efficiency in financial administration at the state level.	No effect	No effect.
Sec. 246.20, 246.25 Audits/Reporting.	Sec. 246.20, 246.25 Audits/Reporting.	Sec. 246.20, 246.25 Audits/Reporting.				
Sec. 246.20(b)(1) refers to a dated citation.	Sec. 246.20(b)(1) refers to the current citation.	Same as proposed.	No effect	No effect	No effect	No effect.
Sec. 246.25(b)(1) requiems monthly reporting of certain information on participation, administrative funds, and local agencies.	Sec. 246.25(b)(1) no longer requires itemized NSA expenditures or the number of persons on wait lists to be reported on a monthly basis.	Same as proposed, except deletes proposed requirement for reporting on cash allowances exceeding three days.	This provision may streamline the process of information collection at the regional level.	This provision may reduce administrative burden by reducing the amount of information that must be formally submitted monthly.	This provision may reduce administrative burden by reducing the amount of information that must be formally submitted monthly.	No effect.
Under Sec. 246.25(b)(3) and (c), FNS required certain participation, Civil Rights, and local agency data on a quarterly basis.	Sec. 246.25(b)(2) codifies annual or biennial reporting of this data, but requires change of local agency information whenever such change occurs, as per actual practice.	Same as proposed.	No effects; the annual of biennial data reporting is current practice.	No effect; the annual or biennial data reporting is current practice.	No effect; the annual or biennial data reporting is current practice.	No effect.
Sec. 246.26 Confidentiality.	Sec. 246.26(d)–(i) Confidentiality.	Sec. 246.26(d)–(i) Confidentiality.				
Pertains only to information obtained from participants and applicants.	Clarifies that all information about a participant or applicant is protected.	Same as proposed.	No effect	No effect	No effect	No effect.
Information may be shared with persons directly administering or enforcing WIC, health and welfare programs, and the Comptroller General.	Clarifies that another State or local agency has access to confidential applicant or participant information.	Same as proposed; preamble clarifies that persons administering or enforcing WIC includes WIC IT staff, contract Single Audit staff, and WIC contractor bank staff.	No effect	This provision may enhance collaboration between programs at the state level.	This provision may enhance collaboration between programs at the local level.	This provision may allow participants to receive enhanced services through program collaboration.

Current rule	Proposed rule	Final rule	Final rule effects on:	State agencies	Local agencies	Participants
			USDA–FNS			
State option for information-sharing agreements with ''health or welfare'' programs; shared information may only be used for eligibility and outreach.	Allows information sharing with public organizations other than health and welfare, and for purposes other than eligibility in other programs and outreach; the additional allowed purposes include (1) enhancing the health, education and well-being of participants and applicants, (2) streamlining administrative procedures, and (3) evaluating the State's health system.	Same as proposed; preamble clarifies that MOU may permit information sharing with Child Protective Services upon request if WIC suspects abuse, and public organization includes non-WIC public agencies, but not law enforcement or researchers.	No effect	This provision may enhance collaboration between programs as the state level.	This provision may enhance collaboration between programs at the local level.	This provision may allow participants to receive enhanced services through program collaboration, while remaining assured that confidential information is not being misused.
Allows the sharing of WIC information through agreements with other programs administered by the State/local agency.	Allows a WIC State/local agency to share information through written agreements with its other programs.	Same as proposed.	No effect	No effect	No effect	No effect.
No current provision in regulations. FNS Instruction 800–1 requires that information to private parties such as physicians must be through written consent obtained after certification.	Allows the use of signed release forms from applicants and participants as part of the WIC application and certification process in order to share information with private doctors.	Same as proposed.	No effect	This provision may streamline and provide consistency to the consent process. This provision is optional at the state level.	This provision may streamline and provide consistency to the consent process.	No effect.
No current provision in regulations. FNS Instruction 800–1 permits reporting on child abuse.	Clarifies that State and local agency staffs are permitted to share information to comply with required reporting of known or suspected child.	Same as proposed; additional clarification added regarding information-sharing with Child Protective Authorities as noted above with respect to public organizations.	No effect	No effect; a current FNS instruction allows reporting of child abuse.	No effect; a current FNS instruction allows reporting of child abuse.	No effect; a current FNS instruction allows reporting of child abuse.
Required notification to participant/applicant at certification on how confidential information will be shared.	Requires notification to participant or applicant at certification or later on how confidential information will be shared for non-WIC purposes.	Same as proposed.	No effect	No effect	No effect	No effect.

Current rule	Proposed rule	Final rule	Final rule effects on:	State agencies	Local agencies	Participants
			USDA–FNS			
No current provision in the regulations. Policy Memorandum 94–3 addresses subpoenas and search warrants.	Requires State/local agency to consult with legal counsel on subpoenas and comply with search warrants.	Same as proposed and clarifies in the final rule that no attempt is needed to quash a subpoena if it is withdrawn through the courts.	No effect	No effect	No effect	No effect.

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September 27, 2006

Part V

Department of Housing and Urban Development

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2007; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5068–N–02]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2007

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fair Market Rents (FMRs) for Fiscal Year (FY) 2007.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program (Mod Rehab), and to serve as a rent ceiling in the HOME rental assistance program. Today's notice provides final FY2007 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2007.

DATES: *Effective Date:* The FMRs published in this notice are effective on October 1, 2006.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site at *http://www.huduser.org/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. An asterisk before the FMR area name identifies a 50th percentile area. Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or further requests for methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone (202) 708–0590. Questions about disaster-related FMR exceptions should be referred to the respective local HUD office. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the U.S. Housing Act of 1937 (USHA) (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the Housing Choice Voucher program must meet reasonable rent standards.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page at *http://www.hudclips.org.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site at *http://www.gpoaccess.gov/fr/index.html.* Information on how FMRs are determined, including detailed calculations, is available at *http://www.huduser.org/fmr/fmr.html.*

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states in part as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

The Department's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.) Final FY2007 FMRs are published on or before October 1, 2006, as required by section 8(c)(1) of the USHA.

III. Proposed FY2007 FMRs

On June 15, 2006 (71 FR 34726), HUD published proposed FY2007 FMRs. As noted in the preamble to the proposed FMRs, the FMRs for FY2007 reflect minor changes that allow further modifications of the core-based statistical areas (CBSA), as defined by the Office of Management and Budget (OMB), based on median family income differences between the CBSA and the CBSA components defined by FY2005 FMRs. All proposed metropolitan FMR areas consist of areas within new OMB metropolitan areas. In general, any parts of old metropolitan areas, or formerly nonmetropolitan counties, that would have more than a 5 percent increase or decrease in their FMRs or median family incomes as a result of implementing the new OMB metropolitan definitions are defined as separate FMR and income limit areas (provided that there are enough recent mover renter household observations in the 2000 Census data).

During the comment period, which ended August 1, 2006, HUD received 25 public comments on the proposed FY2007 FMRs. Most of the public comments received lacked the data needed to support FMR changes. The comments received are discussed in more detail later in this notice.

IV. FMR Methodology

The FY2007 FMRs are based on current OMB metropolitan area definitions that were first used in the FY2006 FMRs. These definitions have the advantages that they are based on more current (2000 Census) data, use a more relevant commuting interchange standard, and generally provide a better measure of current housing market relationships. HUD had three objectives in defining FMR areas for FY2006: (1) To incorporate new OMB metropolitan area definitions so the FMR estimation system can employ new data collected using those definitions; (2) to better reflect current housing markets; and (3) to minimize the number of large changes in FMRs due to use of the new OMB definitions. These objectives continue to apply to the proposed FY2007 FMRs, and area definitions were developed to achieve these objectives as follows:

- FMRs were calculated for each of the new OMB metropolitan areas using 2000 Census data.
- Subparts of any of the new areas that had separate FMRs under the old OMB definitions, and that had a

sufficiently large 2000 Census count of recent mover renter households in standard quality units, were identified, and 2000 Census Base Rents for these subparts were calculated. Only the subparts within the new OMB metropolitan area were included in this calculation (e.g., counties that had been excluded from the new OMB metropolitan area were not included).

- Metropolitan subparts of new areas that had previously had separate FMRs were assigned their own FMRs if their 2000 Census Base Rents differed by more than 5 percent from the new OMB area 2000 Census Base Rent.
- Formerly metropolitan counties removed from metropolitan areas get their own FMRs.
- For FY2007 FMRs, an additional comparison was made to determine if new sub-areas should be created. Metropolitan subparts of new areas that had previously had separate FMRs were assigned their own FMRs if their 2000 Census Median Family Income differed by more than 5 percent from the new OMB area 2000 Census Median Family Income.

A. Data Sources

FY2007 FMRs are based on 2000 Census data updated with more current survey data. At HUD's request, the Census Bureau prepared a special publicly releasable Census file that permits almost exact replication of HUD's 2000 Base Rent calculations, except for areas with few rental units. This data set is located on HUD's HUDUSER Web site at *http://www.huduser.org/datasets/fmr/CensusRentData/*. The area-specific data and computations used to calculate final FY2007 FMRs and FMR area definitions can be found at *http://www.huduser.org/datasets/fmr/fmrs/*.

B. FMR Updates From 2006 to 2007

Local Consumer Price Index (CPI) data is used to move rents from the end of 2004 to the end of 2005 for Class A cities covered by local CPI data. Census region CPI data is used for Class B and C size cities and nonmetropolitan areas without local CPI update factors.

C. Additional Rent Surveys and Other Data

The Department regularly obtains additional rent survey data to update the 2000 Census rent data in selected areas. Random Digit Dialing (RDD) telephone rent surveys meeting the Department's statistical criteria for updating FMRs covering 11 additional areas were conducted by HUD in the June-July 2006 period and completed in time for use in this publication. In addition, one public housing authority (PHA) survey was submitted. Table 1 identifies the areas surveyed and changes in the final FMR, if any, based on survey results. The first column of Table 1 identifies the RDD survey area. The second column shows the proposed FY2007 FMR as published on June 15, 2006. The third column shows the final FY2007 FMR. The fourth column summarizes the impact of the RDDs.

TABLE 1.—RESULTS OF RECENT RDD RENT SURVEYS

Area surveyed	Proposed FY2007 FMR	Final FY2007 FMR	RDD result
Baltimore-Towson, MD MSA	998	941	Decrease.
Beaumont-Port Arthur, TX	593	593	No Change.
Dallas, TX	798	798	No Change.
Hattiesburg, MS	549	549	No Change [1]
Houston, TX	768	768	No Change.
Island County, WA	665	823	Increase.
Jackson, MS	638	638	No Change.
Little Rock, AR	614	614	No Change.
San Antonio, TX	715	715	No Change.
San Francisco, CA	1551	1551	No Change.
Shreveport, LA	586	586	No Change.
Clallam County, WA	617	687	Increase.

[1] An RDD survey performed in Hattiesburg, MS, indicated that the two-bedroom FMR should be reduced to $513. Even though the RDD survey was modified to cover only movers since Hurricane Katrina in 2005, HUD has determined not to use the results, given the continuing uncertainty about the state of Gulf Coast housing markets as the pressures on the rental housing stock increase with the acceleration of rebuilding activity in Mississippi.

HUD is directed by statute to use the most recent data available in its FMR publications. These RDD survey results are being implemented in this final notice FY2007 FMR publication consistent with that requirement.

The RDD surveys conducted in the Gulf of Mexico areas (Beaumont-Port Arthur, Dallas, Hattiesburg, Houston, Jackson, Little Rock, San Antonio, and Shreveport) used 6 months as the recent mover time period, instead of the normal 15 months. This shorter time period was used to determine with greater accuracy how the evacuees from the Katrina and Rita hurricanes impacted rental-housing markets in these areas. Because most of these areas had relatively soft rental markets before the hurricanes, the additional renters were absorbed without significant rental housing cost increases.

HUD also used the shorter time period definition of recent mover for the Island County, WA survey in an attempt to measure the impact of the September 2005 addition of a naval air squadron on the local rental housing market. Again, a 6-month recent mover definition was used. This area received an increase in its FMR for FY2007.

D. FMRs by Bedroom Size

FMR estimates are calculated for two-bedroom units. This is the most common type of rental unit and, therefore, the easiest to accurately survey and analyze. After each Decennial Census, rent ratios between two-bedroom units and other unit sizes are calculated. These ratios are then used to calculate FMRs in future years. This is done because obtaining accurate two-bedroom estimates and then using pre-established cost relationships with other bedroom sizes to update those rent estimates is much easier than developing independent FMR estimates for each bedroom size. A publicly releasable version of the data file that permits derivations of rent ratios from the 2000 Census, as well as demonstrations of how the data are used, are available at *http://www.huduser.org/datasets/fmr/CensusRentData/index.html.*

The rents for three-bedroom and larger units continue to reflect HUD's policy to set higher rents for these units than would result from using normal

market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

A further adjustment is made for areas with local bedroom-size intervals above or below what are considered to be reasonable ranges or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (e.g., luxury efficiency apartments that rent for more than typical one-bedroom units). Bedroom interval ranges were established based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. The final ranges used were: efficiency units are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR, one-bedroom units must be between 0.76 and 0.90 of the two-bedroom unit, three-bedroom units must be between 1.10 and 1.34 of the two-bedroom unit, and four-bedroom units must be between 1.14 and 1.63 of the two-bedroom unit. Bedroom rents for a given FMR area were then adjusted if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (e.g., efficiency rents were not allowed to be higher than one-bedroom rents and three-bedroom rents were not allowed to be higher than four-bedroom rents.) [2]

For nonmetropolitan counties with few rental units and small Census recent-mover rent samples, Census-defined county group data were used in determining rents for each bedroom size. This adjustment was made to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this new estimation method had less than 200 two-bedroom Census-tabulated observations.

E. State Minimums

In response to comments received on the FY2005 and the proposed FY2006 FMRs, a state minimum policy similar to that used prior to FY2005 has been implemented. The rationale for having a state minimum FMR is that some low-income, low-rent nonmetropolitan counties have Census-based FMR estimates that appear to be below long-term operating costs for standard quality rental units and raise concerns about housing quality. Housing quality problems are limited in most parts of the country and have little impact on FMR estimates. The exception to this generality within the continental United States occurs in some nonmetropolitan areas with unusually low rents. State minimum FMRs have been set at the respective state-wide median nonmetropolitan rent level, but are not allowed to exceed the U.S. median nonmetropolitan rent level. This change primarily affects small nonmetropolitan counties in the South with low rents.

V. Public Comments

A total of 25 public comments were received on the proposed FY2007 FMRs. Two comments, those from the National Association of Home Builders (NAHB) and the National Association of Housing and Redevelopment Officials (NAHRO), were broad in scope, addressing various aspects of the proposed methodology for establishing the FY2007 FMRs. The remainder of the comments addressed the FMR levels proposed in specific FMR areas as being either too low or too high, or urged that specific FMR area definitions be modified.

NAHB disagreed with the proposed requirement that an area must have a large enough sample of 2000 Census rents on which to base FMRs in order for the area to be treated as a sub-area within a CBSA. The proposed notice for the FY2007 FMRs created separate FMR areas for any parts of old metropolitan areas, or formerly nonmetropolitan counties that would have more than a 5 percent increase or decrease in their 2000 Census base 40th percentile two-bedroom rent, or more than a 5 percent increase or decrease in their 2000 Census base area median family income as a result of implementing the new OMB CBSA definitions, and have at least 200 recent mover cases in the 2000 Census rent data. NAHB urged the Department to drop the 200 recent mover threshold in the 2000 Census data if the other criteria would qualify the area as a separate area. Since HUD's median family income and income limit estimates are defined for the same geographic areas as FMRs, the NAHB noted that the 200 recent mover criterion resulted in income limit decreases for some areas because they did not qualify to be treated as sub-areas.

In response to this comment, the Department notes that FMRs are used in the estimation process for income limits; thus, the areas upon which both estimates are made must (except when required by statute) remain the same. Furthermore, HUD cannot determine FMRs without sufficient data, so these small areas must be incorporated into the larger metropolitan areas. The Department believes that the 200 recent mover threshold is reasonable and consistent with HUD's Final Information Quality Guidelines (67 FR 69642), and no change is being made to define additional FMR areas that fail to meet this criterion.

NAHRO commented on several aspects of the proposed FY2007 FMRs. First, NAHRO recommended that the Department return to using the OMB metropolitan area definitions based on the 1990 Census data '' definitions that formed the basis for establishing FMR areas from FY1993 through FY2005. NAHRO states that the proposed CBSA-based areas cause ''dilution'' of metropolitan FMRs by including former nonmetropolitan counties in the new metropolitan area definitions, resulting in decreased rental assistance payments for in-place voucher-assisted households. The Department finds it inappropriate to continue to use such old data (from the 1990 Census) for housing market determinations. To more accurately define today's housing markets, the final FY2007 FMRs follow the CBSA metropolitan area definitions, with modifications as appropriate, in light of these definitions being based on 2000 Census data as analyzed by OMB.

NAHRO also disagreed with the proposed rule on including rental data from formerly nonmetropolitan counties established as separate FMR sub-areas when calculating the FMRs for the remainder of the CBSA, again arguing that this causes dilution of the FMR in the affected CBSA areas. The Department believes that inclusion of rental data from the entire CBSA, even when some formerly nonmetropolitan counties have been established as sub-areas due to greater than 5 percent changes in 2000 Census based FMR or median family incomes, is appropriate

[2] The preamble for the final FY2006 FMRs, the revised final FY2005 FMRs, and the final FY2005 FMRs erroneously stated that a 3 percent differential between three-bedroom FMRs and four-bedroom FMRs was maintained. A 3 percent minimum differential has never been included in the estimated three-bedroom and four-bedroom FMRs.

to smooth the transition for future FMR determinations that will cover the entire CBSA area. HUD intends to analyze CBSAs and sub-areas on an ongoing basis, and, as these rents converge, to reduce the number of sub-areas.[3] The final FY2007 FMR does not change this calculation methodology.

NAHRO also objected to the proposed policy to modify the CBSA definitions by establishing sub-areas based on changes in 2000 Census base median family incomes of more than 5 percent. In some cases, the result of applying the median family income test has been for some CBSA sub-areas to receive lower FMRs than in the absence of the policy. The Department listed the areas so affected in a table in Section F of the proposed FY2007 FMR notice. NAHRO suggests that this outcome is inconsistent with the Department's primary area hold-harmless policy for income limits. In response to this comment, the Department reiterates that FMRs are used in the estimation process for income limits; thus, the area definition of both estimates must (except when required by statute) remain the same. Furthermore, HUD has a hold-harmless policy for income limits because without such a policy, program rent revenues in subsidized rental projects with rents statutorily tied to income limits may fall, leading to the possibility of project default or departure from the program. HUD does not have a similar hold-harmless policy for FMRs because voucher program rules are designed to mitigate the effects of decreases in FMRs on individual tenants. In cases where FMRs decline and the PHAs reduce payment standards accordingly, voucher rents for existing tenants remaining in their units may be maintained in accordance with the previous higher payment standard until the second annual recertification of the tenants' income and rent subsidy after the payment standard declines. Thus, for existing voucher tenants who do not move, the rent level supported by their voucher will not decrease until up to 2 years after the payment standard decrease goes into effect.

NAHRO disagreed with HUD's use of regional CPI data to update rents for Class B and C cities rather than using local CPI update factors. Until ACS data become available for this purpose, an available alternative to the use of regional CPI factors is to use regional RDDs. However, regional RDD update factors, instituted to improve rent estimations and requiring tremendous fiscal resources to produce, did not consistently provide better estimations than using regional CPI data. Regional RDD results showed that some areas were being overestimated and some underestimated. Therefore, the FY2007 FMRs for Class B and C cities continue to use the regional CPI update factors.

NAHRO recommended that HUD consider additional analysis of the utility component of the gross rents comprising the FMR estimates, further suggesting that HUD consider publishing utility components of FMRs separately. The Department appreciates these recommendations, but notes that utilities are included in the FY2007 FMR estimates as required by statute, and that PHAs set utility allowances based on their utility schedules and the individual circumstances of each lease. In addition, HUD is conducting research to produce a utility schedule model for PHAs to use to improve the accuracy of their utility schedule estimates.

NAHRO suggested that HUD exempt communities that have dealt with the impact of Hurricane Katrina and Rita evacuees from losing their 50th percentile status. Baton Rouge and Dallas lost their 50th percentile status in a notice dated February 14, 2006, but Dallas regained it for the FY2007 FMRs, and Baton Rouge received market adjusted 40th-percentile FMRs effective March 6, 2006, that were higher than its former 50th percentile FMRs. The Department notes that the 50th percentile FMR policy is not the correct mechanism to address the cost of disasters. HUD has a policy of allowing federal disaster areas to apply for regulatory suspension waivers and allowing payment standards to be set at up to 120 percent of the FMR.[4] Furthermore, under section 982.503(c)(3), payment standards may even exceed 120 percent of the FMR, based on a request by a PHA to the Assistant Secretary for Public and Indian Housing. So far, this administrative flexibility has allowed the Housing Choice Voucher program to continue operating effectively in these areas. HUD has also recently surveyed many FMR areas where the Gulf Coast hurricane evacuees were placed. No area had an increase in the FMR based on HUD's survey results.

Additional comments from NAHRO seem based on incorrect interpretations of the methodology for estimating the FY2007 FMR. For example, one criterion to determine if any parts of old metropolitan areas or formerly nonmetropolitan counties qualify as a sub-area under the new CBSA definitions is that the 2000 Census base 40th percentile, two-bedroom rent for the area is found to be more than 5 percent different than the comparable rent for the entire CBSA area. NAHRO erroneously suggests the 5 percent test is based on a comparison of the proposed FY2007 FMR with the final FY2006 FMR. Similarly, adjustments to the FMR areas based on median family income differentials are also based on 2000 Census data, not FY2006 data. The Department reminds all interested parties that a detailed description of the FY2007 FMR methodology is available to the public at *http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr07.*

One comment requested higher FMRs for manufactured home space rentals in Sonoma County, California. The comment included data obtained from a survey conducted by the Sonoma County Housing Authority in support of an exception rent. The survey results provide Sonoma County with an exception rent for manufactured homes of $603, as listed in Schedule D.

The Housing Authority for the City of Lafayette, Indiana, noted that the FMRs for its area are too high given its low funding levels and that the Department must press for greater funding for the voucher program. The Elkhart Housing Authority stated that the proposed increase in the FMRs would reduce the number of homes they could serve since the level of funding has been reduced. HUD has no evidence of a need to reduce the FMRs in these areas; however, housing authorities have the flexibility to set payment standards below 100 percent of the FMR[5] and the obligation to use rent reasonableness in determining rents paid to owners accepting vouchers. PHAs that are concerned about costs in their voucher programs can set payment standards at 90 percent of the FMR, without any HUD approval. Moreover, PHAs may request HUD approval to set payment

[3] Previously, for the area definitions used through FY2005, there was little opportunity to change the FMR data once the initial FMR areas were determined. In the future, there will be more opportunity to revise the FMR area definitions based on American Community Survey (ACS) data, and HUD expects to see the number of sub-areas reduced over time. The Department expects to use CBSA rents as the basis for FMRs whenever possible, because the strong relationships among counties in CBSAs suggests that in the long run CBSAs will generally be the best definition of rental housing markets. In the New England states, it will take longer for ACS data to become available because the areas that have to be evaluated are generally smaller, and no reduction in the number of sub-areas will occur without data.

[4] See the October 3, 2005, Hurricane Katrina Notice (70 FR 57716) and the November 1, 2005, Hurricane Rita Notice (70 FR 66222).

[5] By statute, PHAs have the discretion to set their payment standards at any level within the interval of 90 percent to 110 percent of the FMR.

standards below 90 percent of the FMR. Voucher program funding and funding formula allocations are outside the scope of this notice.

The Housing Authority of Island County, Washington, noted that its FMR should be much higher than what is proposed for FY2007 and provided a report on ''asking rents'' in support of its comments. The report indicated that Island County rents were closer to Seattle rents than shown in the FY2007 proposed FMRs. In September 2005, the Department of Defense (DOD) moved a naval air squadron to Island County. HUD believed that the additional DOD personnel substantially changed the rental market on Island County from its FMR basis, the 2000 decennial Census, so a survey was conducted to determine the appropriate FMR level.

Several comments were filed concerning the drop in the four-bedroom FMR for the New York City metropolitan area. It was noted that this decrease in the FMR would mostly affect the immigrant community. The New York City FMR area became a sub-area in FY2007, without Monmouth and Ocean counties in New Jersey, because its median income was well below the median income of the CBSA, see: *http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr07.* In FY2006, New York City used the two-bedroom FMR and the bedroom ratios of the CBSA instead of its sub-area amount because the 2000 sub-area FMR was within 5 percent of the CBSA 2000 FMR. Now that it has been established as a sub-area, New York City must use the sub-area rents to determine the 2000 two-bedroom FMR and bedroom intervals. The ratio between the two-bedroom FMR and the four-bedroom FMR is less for the sub-area than for the CBSA. According to the comments, this decrease due to a change in the area definition creates an undue hardship for larger family tenants in this area. While no data was filed with the comments, the 2005 New York City Vacancy Survey, conducted annually by the Bureau of the Census, was reviewed to determine if an adjustment could be made to the four-bedroom FMR. Analysis of the data revealed a four-bedroom recent mover, standard quality, 40th percentile rent greater than HUD's published FY2005 four-bedroom FMR. HUD then trended this value forward from 2005 to 2007 using HUD's FY2006 and FY2007 update factors, and the result has been incorporated in these final FY2007 FMRs.

A law firm, representing the plaintiff in a discrimination settlement in Dallas, requested reinstatement of the FY2005 FMRs, and charged that all reductions since that time to the Dallas FMRs were discriminatory. The FMR decrease, since FY2005, is the result of an RDD survey conducted in early 2005. As discussed earlier, another survey conducted this summer confirmed the results of the 2005 survey, resulting in no change in the FMR. Dallas regains its 50th percentile FMR in FY2007, effective October 1, 2006, which it lost effective March 1, 2006. Because the FY2007 FMR for Dallas represents the best data that are available, reverting to the FY2005 FMR is not appropriate.

Two areas that specifically requested changes in their FMR areas are Santa Barbara County, California, and Dartmouth Town, Massachusetts. Santa Barbara would like to be split into North and South County housing markets with rents determined by apartment data. These data are not statistically valid and cannot be used to establish FMRs. The difference in the Santa Barbara County rents can be met by applying exception payment standards in the high-rent jurisdictions. Dartmouth is and has always been part of the New Bedford metropolitan area. The similarity in rents between Dartmouth and Providence is not justification for including it in the Providence metropolitan area. Again, exception payment standards can be requested to help Section 8 voucher holders find units in this area.

Several PHAs noted that their FMRs were too low. The Housing Authority of Lake Charles, Louisiana, stated that it is struggling to provide decent, safe, sanitary, and affordable housing under its Section 8 program. Landlords are facing increased repair and insurance costs as a result of the damage inflicted by Hurricane Rita. Lake Charles, like other areas designated as federal disaster areas, may apply for regulatory suspension waivers and set its payment standards at 120 percent of the FMR. The San Francisco Housing Authority stated that its rental market is tightening and was hopeful that the HUD survey would verify this result. The survey did not find higher rents; however, HUD will continue to follow this volatile rental market. The City of Casper, Wyoming, said it was conducting its own survey, but did not submit the results in time for this final notice. The Michigan State Housing Development Authority noted that the change in the geographic area definitions for Lenawee and Muskegon counties in Michigan has significantly reduced their FMRs and that these reductions have significantly affected the ability of tenants to use their vouchers. The PHA intends to conduct surveys of these areas, but the results will not be completed in time for this publication.

Mora Housing Management, Inc., requested that the revisions made to FY2006 FMRs in Puerto Rico, effective June 2, 2006, be made retroactive to provide relief for Mod Rehab properties constrained by the lower FMRs in metropolitan areas that were in place from October 1, 2005, to June 1, 2006, since the lowest rent must be used in all cases. HUD cannot make the Puerto Rico FMR revisions retroactive in this notice. Any procedural changes that can be made for the affected Puerto Rico Mod Rehab units are outside the scope of this notice.

VI. Manufactured Home Space Surveys

In general, the FMR used to establish payment standard amounts for the rental of manufactured home spaces in the Housing Choice Voucher program is 40 percent of the FMR for a two-bedroom unit. HUD modified manufactured home space FMRs for Santa Rosa-Petaluma, California (Sonoma County) based on survey data showing the 40th percentile manufactured home space rent (including the cost of utilities) for the entire FMR area. The new manufactured home space exception FMR is shown in Schedule D.

All approved exceptions to these rents that were in effect in FY2006 were updated to the midpoint of FY2007 using the same data used to estimate the Housing Choice Voucher program FMRs. If the result of this computation was higher than 40 percent of the rebenchmarked two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

VII. HUD Rental Housing Survey Guides

HUD recommends the use of professionally conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $40,000 to $50,000. Areas with 1,000 or more program units usually meet this criterion, and areas with fewer units may meet it if local rents are thought to be significantly different than the FMRs proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties; all county-group surveys have to be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas. In these cases, HUD recommends following the Census county-group definitions as described in the 2000 Census Base Rent section of the FY2007 Documentation System, which can be found at *http://www.huduser.org/fmr/fmrs/index.html*.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER at (800) 245–2691. Larger PHAs should request ''Random Digit Dialing Surveys; A Guide to Assist Larger Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain ''Rental Housing Surveys; A Guide to Assist Smaller Housing Agencies in Preparing Fair Market Rent Comments.'' These guides are also available at *http://www.huduser.org/datasets/fmr.html*.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable if they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification used for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

Accordingly, the FMR Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 21, 2006.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. The FY2007 FMRs reflect a change in metropolitan area definition where HUD is using CBSAs which are made up of one or more counties, as defined by OMB, with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA micropolitan areas.

b. *Modifications to OMB Definitions*—Following OMB guidance, the estimation procedure for the FY2007 FMRs incorporates the 2003 OMB definitions of metropolitan areas based on the new CBSA standards, as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median family incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below:

Metropolitan area CBSAs (referred to as metropolitan statistical areas or MSAs) may be modified to allow for sub-area FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include old-definition MSAs/PMSAs, metropolitan counties deleted from old-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of old-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Sub-areas of MSAs are assigned their own FMRs when the sub-area 2000 Census Base Rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent. Additionally, sub-areas of MSAs are assigned their own FMR when the sub-area 2000 median family income differs by at least 5 percent. MSA sub-areas, and the remaining portions of MSAs after sub-areas have been determined, are referred to as HUD metro FMR areas (HMFAs), to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in the FMR tables.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically, first by metropolitan FMR area, then by nonmetropolitan county for each state. The exception FMRs for manufactured home spaces are listed alphabetically by state in Schedule D.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. A metropolitan FMR area that includes counties and towns from more than one state is listed under each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

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SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	359	397	493	651	766	Calhoun
Auburn-Opelika, AL MSA	355	424	546	719	738	Lee
Birmingham-Hoover, AL HMFA	487	542	604	766	789	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	310	429	477	599	686	Chilton
Columbus, GA-AL MSA	473	498	570	758	897	Russell
Decatur, AL MSA	393	441	508	664	689	Lawrence, Morgan
Dothan, AL HMFA	350	412	467	597	682	Geneva, Houston
Florence-Muscle Shoals, AL MSA	415	417	506	645	800	Colbert, Lauderdale
Gadsden, AL MSA	328	415	504	646	667	Etowah
Henry County, AL HMFA	296	408	453	541	558	Henry
Huntsville, AL MSA	436	474	560	767	842	Limestone, Madison
Mobile, AL MSA	489	523	590	773	912	Mobile
Montgomery, AL MSA	468	553	623	826	1091	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	407	471	610	784	808	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	387	388	465	581	634	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	450	542	644	854	978	Barbour	378	379	455	563	580
Bullock	335	379	465	557	600	Butler	335	379	465	557	600
Chambers	376	408	453	615	634	Cherokee	395	396	476	567	585
Choctaw	376	396	453	574	767	Clarke	294	407	453	542	796
Clay	377	378	453	560	697	Cleburne	380	381	457	560	697
Coffee	362	413	468	640	821	Conecuh	376	396	453	574	767
Coosa	368	407	453	614	689	Covington	377	378	453	618	637
Crenshaw	335	379	465	557	600	Cullman	394	406	475	639	657
Dale	350	404	453	654	793	Dallas	301	418	464	585	628
DeKalb	338	359	453	602	620	Escambia	376	381	453	565	694
Fayette	297	344	453	660	797	Franklin	295	382	453	611	795
Jackson	376	408	453	577	795	Lamar	304	376	453	605	794
Macon	337	363	468	624	645	Marengo	376	400	453	587	603
Marion	294	344	453	576	796	Marshall	400	429	484	653	720
Monroe	376	408	453	627	693	Perry	376	400	453	587	603
Pickens	304	376	453	605	794	Pike	361	389	453	582	600
Randolph	377	378	453	560	697	Sumter	304	387	453	605	794
Talladega	383	384	460	621	811	Tallapoosa	362	370	454	640	743
Washington	376	396	453	574	767	Wilcox	376	396	453	574	767
Winston	302	344	453	542	558						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	660	751	942	1356	1652	Anchorage
Fairbanks, AK MSA	558	672	859	1244	1313	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	536	625	797	1133	1376	Matanuska-Susitna

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	697	792	1004	1241	1279	Aleutians West	697	792	1004	1241	1279
Bethel	798	1000	1213	1451	2130	Bristol Bay	697	792	1004	1241	1279
Denali	589	727	907	1273	1434	Dillingham	697	792	1004	1241	1279
Haines	589	727	907	1273	1434	Juneau	711	871	1096	1481	1846
Kenai Peninsula	526	602	732	1003	1285	Ketchikan Gateway	627	800	962	1402	1689
Kodiak Island	671	786	1034	1486	1573	Lake and Peninsula	697	792	1004	1241	1279
Nome	698	897	1030	1243	1280	North Slope	719	840	1104	1320	1359
Northwest Arctic	697	792	1004	1241	1279	Prince of Wales-Outer Ketchikan	697	792	1004	1241	1279
Sitka	669	771	920	1340	1615	Skagway-Hoonah-Angoon	697	792	1004	1241	1279
Southeast Fairbanks	589	727	907	1273	1434	Valdez-Cordova	589	727	907	1273	1434
Wade Hampton	697	792	1004	1241	1279	Wrangell-Petersburg	697	792	1004	1241	1279
Yakutat	697	792	1004	1241	1279	Yukon-Koyukuk	697	792	1004	1241	1279

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	699	831	939	1208	1523	Coconino
*Phoenix-Mesa-Scottsdale, AZ MSA	553	648	782	1139	1359	Maricopa, Pinal
Prescott, AZ MSA	571	589	744	1084	1117	Yavapai
*Tucson, AZ MSA	503	591	772	1114	1251	Pima
Yuma, AZ MSA	493	582	695	986	1208	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	361	442	522	724	918	Cochise	424	492	617	852	1047
Gila	463	542	713	979	1008	Graham	482	520	582	804	925
Greenlee	441	490	615	845	956	La Paz	493	494	592	838	863
Mohave	527	580	676	935	1043	Navajo	432	462	610	822	974
Santa Cruz	508	509	645	940	968						

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	437	461	576	839	862	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	349	396	493	657	715	Crawford, Sebastian
Franklin County, AR HMFA	309	403	474	601	733	Franklin
Grant County, AR HMFA	386	397	485	702	724	Grant
Hot Springs, AR MSA	373	462	575	718	740	Garland
Jonesboro, AR HMFA	435	453	523	736	758	Craighead
Little Rock-North Little Rock, AR HMFA	484	551	614	822	849	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	548	596	662	882	910	Crittenden
Pine Bluff, AR MSA	368	437	547	656	778	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	308	399	474	631	755	Poinsett
Texarkana, TX-Texarkana, AR MSA	439	443	546	666	725	Miller

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	362	381	474	688	708
Baxter	365	424	513	689	870
Bradley	353	358	474	588	623
Carroll	416	417	501	632	880
Clark	378	383	493	635	655
Cleburne	430	431	517	709	910
Conway	394	406	474	653	710
Dallas	307	426	474	604	768
Drew	351	451	542	681	950
Greene	307	428	474	693	714
Hot Spring	395	396	474	621	641
Independence	329	392	474	613	665
Jackson	319	419	474	669	690
Lafayette	374	428	492	588	704
Lee	337	381	474	632	734
Logan	308	398	474	678	758
Mississippi	335	374	489	645	778
Montgomery	370	430	541	680	701
Newton	398	399	479	618	695
Phillips	393	396	474	617	637
Polk	394	427	474	616	749
Prairie	394	395	474	594	613
St. Francis	402	417	487	687	853
Searcy	398	399	479	618	695
Sharp	394	395	474	604	624
Union	406	427	488	632	821
White	407	408	490	665	685
Yell	392	413	474	650	670

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	369	382	502	601	662
Boone	402	403	484	620	696
Calhoun	307	426	474	604	768
Chicot	353	358	474	588	623
Clay	382	384	474	607	647
Columbia	313	402	481	590	676
Cross	398	400	480	700	764
Desha	353	358	474	603	623
Fulton	377	379	474	623	695
Hempstead	372	416	487	583	670
Howard	362	420	474	611	630
Izard	377	379	474	623	695
Johnson	307	422	474	632	755
Lawrence	309	378	474	583	771
Little River	374	428	492	600	704
Marion	393	395	474	624	687
Monroe	394	395	474	594	613
Nevada	374	428	492	588	704
Ouachita	307	427	474	652	765
Pike	374	428	492	588	704
Pope	358	384	497	700	720
Randolph	308	385	474	567	831
Scott	394	395	474	656	831
Sevier	395	409	474	655	759
Stone	377	379	474	623	695
Van Buren	308	360	474	587	757
Woodruff	394	395	474	594	613

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	503	542	646	933	1119	Kern
Chico, CA MSA	489	582	702	990	1181	Butte
El Centro, CA MSA	488	551	680	936	1192	Imperial
Fresno, CA MSA	558	615	726	1056	1138	Fresno
Hanford-Corcoran, CA MSA	512	545	633	923	1112	Kings
Los Angeles-Long Beach, CA HMFA	843	1016	1269	1704	2051	Los Angeles
Madera, CA MSA	513	539	687	999	1030	Madera
Merced, CA MSA	474	541	657	937	1094	Merced
Modesto, CA MSA	584	645	760	1090	1259	Stanislaus
Napa, CA MSA	764	856	1112	1538	1747	Napa
Oakland-Fremont, CA HMFA	874	1055	1250	1695	2099	Alameda, Contra Costa
*Orange County, CA HMFA	1103	1238	1485	2125	2441	Orange

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CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	1047	1156	1471	2108	2411	Ventura
Redding, CA MSA	480	559	680	992	1195	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	765	835	974	1383	1617	Riverside, San Bernardino
Sacramento--Arden-Arcade--Roseville, CA HMFA	715	813	992	1431	1641	El Dorado, Placer, Sacramento
Salinas, CA MSA	856	963	1106	1563	1637	Monterey
San Benito County, CA HMFA	619	838	932	1321	1635	San Benito
*San Diego-Carlsbad-San Marcos, CA MSA	870	993	1205	1757	2118	San Diego
San Francisco, CA HMFA	1008	1239	1551	2071	2188	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	922	1068	1284	1846	2033	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	663	784	955	1391	1432	San Luis Obispo
Santa Barbara-Santa Maria, CA MSA	856	956	1073	1413	1613	Santa Barbara
Santa Cruz-Watsonville, CA MSA	883	1042	1359	1956	2015	Santa Cruz
Santa Rosa-Petaluma, CA MSA	758	923	1165	1653	1933	Sonoma
Stockton, CA MSA	623	710	876	1203	1515	San Joaquin
Vallejo-Fairfield, CA MSA	808	869	997	1398	1722	Solano
Visalia-Porterville, CA MSA	498	556	647	925	950	Tulare
Yolo, CA HMFA	703	744	910	1326	1411	Yolo
Yuba City, CA MSA	452	510	627	912	976	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	516	579	738	1052	1083	Amador	556	652	855	1242	1280
Calaveras	567	567	682	994	1097	Colusa	518	520	676	873	1186
Del Norte	507	513	664	967	997	Glenn	443	454	598	778	799
Humboldt	471	551	725	1040	1151	Inyo	465	488	634	924	1089
Lake	465	545	710	1029	1145	Lassen	453	531	698	1015	1046
Mariposa	516	579	738	1052	1083	Mendocino	520	641	779	1063	1366
Modoc	449	496	649	925	960	Mono	606	730	932	1277	1638
Nevada	582	680	896	1294	1574	Plumas	461	540	711	1037	1249
Sierra	545	636	839	1189	1472	Siskiyou	402	482	617	878	905
Tehama	421	479	625	908	1091	Trinity	457	479	629	863	957
Tuolumne	501	596	770	1064	1096						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	716	830	1041	1518	1820	Boulder
Colorado Springs, CO HMFA	554	622	785	1120	1325	El Paso
*Denver-Aurora, CO MSA	630	718	909	1291	1504	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	552	662	802	1168	1361	Larimer
Grand Junction, CO MSA	500	501	602	877	1060	Mesa
Greeley, CO MSA	532	564	690	1007	1187	Weld
Pueblo, CO MSA	471	496	652	854	966	Pueblo
Teller County, CO HMFA	580	679	893	1300	1566	Teller

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	378	468	519	705	912
Baca	397	466	519	739	798
Chaffee	421	530	646	941	969
Conejos	397	466	519	739	798
Crowley	425	439	534	700	860
Delta	494	504	594	815	840
Eagle	835	975	1283	1614	2204
Garfield	640	729	808	997	1027
Gunnison	519	570	741	1026	1301
Huerfano	397	466	519	739	798
Kiowa	425	439	534	700	860
Lake	633	797	963	1199	1690
Las Animas	379	503	558	719	743
Logan	433	434	553	720	833
Moffat	406	444	557	730	978
Montrose	426	558	647	859	1064
Otero	405	428	519	719	740
Phillips	425	439	534	700	860
Prowers	398	467	519	704	912
Rio Grande	398	466	519	753	799
Saguache	397	466	519	739	798
San Miguel	679	816	1042	1519	1565
Summit	732	860	1124	1601	1973
Yuma	425	439	534	700	860

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	504	593	746	907	1171
Bent	425	439	534	700	860
Cheyenne	425	439	534	700	860
Costilla	397	466	519	739	798
Custer	448	524	691	967	1113
Dolores	506	593	686	908	1172
Fremont	401	479	615	883	1012
Grand	502	574	729	1061	1093
Hinsdale	633	797	963	1199	1690
Jackson	562	649	720	928	1120
Kit Carson	425	439	534	700	860
La Plata	553	675	772	1083	1233
Lincoln	425	439	534	700	860
Mineral	633	797	963	1199	1690
Montezuma	442	517	597	713	952
Morgan	480	520	580	773	933
Ouray	633	797	963	1199	1690
Pitkin	882	1031	1357	1885	2383
Rio Blanco	562	649	720	928	1120
Routt	651	771	1002	1198	1760
San Juan	506	593	686	908	1172
Sedgwick	425	439	534	700	860
Washington	425	439	534	700	860

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	665	859	1024	1224	1486	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	677	795	1043	1247	1287	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	822	998	1267	1517	1880	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	703	842	1029	1236	1534	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	803	932	1042	1326	1457	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	777	882	1065	1275	1457	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	624	740	857	1049	1159	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	778	820	1043	1338	1526	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1046	1274	1592	2074	2506	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	536	694	825	988	1028	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	584	761	898	1153	1297	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	536	650	782	984	1044	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	588	640	709	927	1245	Kent

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA...	676	773	923	1105	1314	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	547	595	661	904	931

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington-Arlington-Alexandria, DC-VA-MD HMFA...	995	1134	1286	1659	2171	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	337	467	519	759	779	Baker
Cape Coral-Fort Myers, FL MSA	615	665	757	1029	1059	Lee
Deltona-Daytona Beach-Ormond Beach, FL MSA	502	587	730	944	972	Volusia
*Fort Lauderdale, FL HMFA	784	877	1054	1458	1851	Broward
Fort Walton Beach-Crestview-Destin, FL MSA	496	581	653	953	1046	Okaloosa
Gainesville, FL MSA	518	572	651	952	981	Alachua, Gilchrist
Jacksonville, FL HMFA	588	669	779	978	1120	Clay, Duval, Nassau, St. Johns
Lakeland, FL MSA	467	516	594	753	884	Polk
Miami-Miami Beach-Kendall, FL HMFA	741	839	1018	1302	1522	Miami-Dade
Naples-Marco Island, FL MSA	694	796	896	1114	1159	Collier
Ocala, FL MSA	495	510	599	786	810	Marion
Orlando-Kissimmee, FL MSA	655	712	814	1019	1200	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	488	597	703	947	1056	Brevard
Panama City-Lynn Haven, FL MSA	512	540	618	853	949	Bay
Pensacola-Ferry Pass-Brent, FL MSA	498	542	602	872	1055	Escambia, Santa Rosa
Port St. Lucie-Fort Pierce, FL MSA	578	579	734	970	1000	Martin, St. Lucie
Punta Gorda, FL MSA	516	540	701	1023	1232	Charlotte
*Sarasota-Bradenton-Venice, FL MSA	650	712	857	1094	1202	Manatee, Sarasota
Sebastian-Vero Beach, FL MSA	477	575	734	914	940	Indian River
Tallahassee, FL HMFA	521	579	715	954	982	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	609	676	817	1035	1250	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	490	532	592	778	803	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	764	895	1057	1495	1540	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	337	468	519	643	663	Calhoun	432	433	519	654	746
Citrus	442	480	532	772	929	Columbia	385	445	526	656	923
DeSoto	435	446	524	632	650	Dixie	428	468	519	648	722
Flagler	530	611	769	1077	1148	Franklin	432	433	519	653	744
Glades	457	487	553	675	721	Gulf	432	433	519	654	746
Hamilton	428	468	519	648	722	Hardee	435	473	524	643	661
Hendry	414	495	552	664	819	Highlands	469	471	564	730	872

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Holmes	430	457	519	675	709
Lafayette	428	468	519	648	722
Liberty	432	433	519	654	746
Monroe	692	842	1037	1509	1616
Putnam	431	467	519	623	641
Suwannee	344	468	519	654	717
Union	402	462	519	687	708
Washington	346	393	519	744	765
Jackson	363	466	519	643	750
Levy	430	461	519	663	682
Madison	432	433	519	654	746
Okeechobee	466	483	562	757	779
Sumter	430	467	519	681	911
Taylor	430	467	519	621	638
Walton	463	477	558	690	710

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	444	475	557	747	771	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	477	530	665	886	914	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	647	700	779	948	1035	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	480	521	585	783	824	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	448	487	540	770	948	Brantley, Glynn, McIntosh
Butts County, GA HMFA	354	473	546	797	948	Butts
Chattanooga, TN-GA MSA	488	516	608	748	880	Catoosa, Dade, Walker
Columbus, GA-AL MSA	473	498	570	758	897	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	455	494	547	677	697	Whitfield
Gainesville, GA MSA	624	654	754	926	1074	Hall
Haralson County, GA HMFA	396	415	476	693	840	Haralson
Hinesville-Fort Stewart, GA HMFA	451	489	545	767	873	Liberty
Lamar County, GA HMFA	412	414	496	654	870	Lamar
Long County, GA HMFA	402	437	486	666	686	Long
Macon, GA MSA	468	507	564	695	725	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	405	409	488	589	607	Meriwether
Monroe County, GA HMFA	452	492	545	653	675	Monroe
Murray County, GA HMFA	427	462	514	615	633	Murray
Rome, GA MSA	430	438	565	693	716	Floyd
Savannah, GA MSA	583	631	703	933	963	Bryan, Chatham, Effingham
Valdosta, GA MSA	462	463	557	755	779	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	511	520	618	897	1031	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	395	429	476	580	598
Bacon	396	413	476	606	690
Banks	410	444	492	598	849
Berrien	390	391	476	590	608
Bulloch	438	453	537	644	662
Camden	489	491	591	860	1037
Charlton	396	413	476	606	690
Atkinson	396	413	476	606	690
Baldwin	369	445	552	659	680
Ben Hill	312	402	480	581	597
Bleckley	334	390	476	589	675
Calhoun	395	428	476	611	750
Candler	395	429	476	580	598
Chattooga	310	379	476	571	831

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	395	428	476	611	750
Coffee	394	408	476	593	725
Cook	395	404	476	647	837
Decatur	353	410	540	646	718
Dooly	396	409	476	600	810
Elbert	396	413	476	598	616
Evans	395	429	476	580	598
Franklin	410	444	492	598	849
Glascock	341	361	476	570	669
Grady	309	427	476	660	682
Habersham	468	470	563	674	988
Hart	396	428	476	568	834
Jackson	490	532	592	719	939
Jefferson	341	380	476	570	669
Johnson	357	438	488	630	658
Lincoln	396	413	476	598	616
Macon	396	409	476	600	810
Mitchell	310	394	476	571	792
Morgan	426	427	526	630	648
Pierce	396	413	476	606	690
Pulaski	361	422	476	693	727
Quitman	395	428	476	611	750
Randolph	395	428	476	611	750
Screven	341	361	476	570	669
Stephens	317	440	488	584	603
Sumter	371	417	512	613	900
Taliaferro	396	413	476	598	616
Taylor	396	409	476	600	810
Thomas	434	471	523	672	918
Toombs	309	428	476	663	734
Treutlen	361	422	476	637	728
Turner	396	419	476	604	736
Upson	334	453	515	615	634
Warren	396	413	476	598	616
Wayne	341	386	476	628	835
Wheeler	361	422	476	637	728
Wilcox	361	422	476	637	728
Wilkinson	357	438	488	630	658

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clinch	396	413	476	606	690
Colquitt	396	427	476	570	716
Crisp	395	398	476	601	620
Dodge	376	377	476	637	655
Early	395	428	476	611	750
Emanuel	311	361	476	580	742
Fannin	320	445	493	590	708
Gilmer	464	502	560	739	892
Gordon	463	467	599	716	739
Greene	396	413	476	598	616
Hancock	396	413	476	598	616
Irwin	396	419	476	604	736
Jeff Davis	395	429	476	580	598
Jenkins	341	361	476	570	669
Laurens	396	430	476	639	775
Lumpkin	416	541	642	867	961
Miller	367	427	476	596	710
Montgomery	361	422	476	637	728
Peach	429	430	519	743	781
Polk	389	433	528	651	672
Putnam	359	363	476	692	712
Rabun	466	483	561	724	872
Schley	396	409	476	600	810
Seminole	367	427	476	596	710
Stewart	395	428	476	611	750
Talbot	455	456	550	678	697
Tattnall	397	428	476	628	687
Telfair	361	422	476	637	728
Tift	412	446	494	631	729
Towns	466	483	561	720	872
Troup	456	461	578	731	755
Union	466	483	561	720	872
Ware	395	426	476	610	640
Washington	341	392	476	582	669
Webster	396	409	476	600	810
White	417	519	577	728	876
Wilkes	396	413	476	598	616

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	888	1058	1279	1865	2196	Honolulu

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	649	779	874	1232	1350	Kalawao	700	808	949	1200	1366
Kauai	764	861	1134	1423	1549	Maui	953	1056	1228	1643	1760

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	497	589	695	1011	1074	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	497	537	646	939	1050	Kootenai
Gem County, ID HMFA	435	527	586	852	877	Gem
Idaho Falls, ID MSA	423	445	568	779	978	Bonneville, Jefferson
Lewiston, ID-WA MSA	438	455	570	809	986	Nez Perce
Logan, UT-ID MSA	456	492	615	825	1018	Franklin
Pocatello, ID MSA	364	423	545	788	923	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	424	441	556	753	897	Bear Lake	363	418	534	759	896
Benewah	487	496	623	890	918	Bingham	367	406	521	717	740
Blaine	705	766	850	1207	1490	Bonner	493	517	634	897	924
Boundary	487	496	623	890	918	Butte	403	431	551	779	926
Camas	432	472	589	776	830	Caribou	363	418	534	759	896
Cassia	432	472	589	776	830	Clark	403	431	551	779	926
Clearwater	432	446	553	798	921	Custer	403	431	551	779	926
Elmore	366	427	562	713	873	Fremont	403	431	551	779	926
Gooding	432	472	589	776	830	Idaho	421	451	594	710	840
Jerome	432	472	589	776	830	Latah	433	452	546	796	921
Lemhi	403	431	551	779	926	Lewis	432	446	553	798	921
Lincoln	432	472	589	776	830	Madison	403	404	519	754	820
Minidoka	336	443	519	687	707	Oneida	363	418	534	759	896
Payette	364	439	558	706	922	Shoshone	429	430	519	684	724
Teton	403	431	551	779	926	Twin Falls	389	473	599	772	913
Valley	424	441	556	753	897	Washington	424	441	556	753	897

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	462	510	644	861	1077	McLean
Bond County, IL HMFA	366	391	507	737	867	Bond
Champaign-Urbana, IL MSA	442	538	633	794	1091	Champaign, Ford, Piatt
*Chicago-Naperville-Joliet, IL HMFA	727	832	935	1143	1291	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	350	419	539	645	685	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	422	470	592	755	787	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	523	591	776	1006	1235	DeKalb
Decatur, IL MSA	364	433	550	733	756	Macon
Grundy County, IL HMFA	525	616	807	1016	1368	Grundy

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kankakee-Bradley, IL MSA	491	534	705	914	980	Kankakee
Kendall County, IL HMFA	757	758	911	1281	1387	Kendall
Macoupin County, IL HMFA	421	422	507	632	654	Macoupin
Peoria, IL MSA	410	485	604	778	883	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	445	501	635	831	855	Boone, Winnebago
Springfield, IL MSA	392	461	596	778	868	Menard, Sangamon
St. Louis, MO-IL HMFA	497	539	670	863	903	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	330	392	507	659	680	Alexander	413	421	507	668	736
Brown	329	400	507	677	698	Bureau	357	416	549	676	742
Carroll	384	434	546	680	699	Cass	401	403	507	644	664
Christian	331	424	507	655	766	Clark	328	458	507	738	762
Clay	332	414	507	677	696	Coles	350	448	539	760	946
Crawford	331	390	507	667	699	Cumberland	350	436	527	701	924
De Witt	416	417	509	665	778	Douglas	342	429	527	750	773
Edgar	330	386	507	638	657	Edwards	413	421	507	668	736
Effingham	445	446	537	678	717	Fayette	420	432	507	702	723
Franklin	328	403	507	629	889	Fulton	352	421	507	648	804
Gallatin	413	421	507	668	736	Greene	349	389	510	646	679
Hamilton	413	421	507	668	736	Hancock	423	424	507	609	630
Hardin	413	421	507	668	736	Henderson	350	409	507	640	765
Iroquois	377	419	507	638	748	Jackson	342	418	526	716	891
Jasper	329	408	507	667	686	Jefferson	433	445	530	667	687
Jo Daviess	398	426	507	676	697	Johnson	413	421	507	668	736
Knox	348	407	536	712	734	La Salle	418	451	594	750	964
Lawrence	329	385	507	674	696	Lee	364	448	538	718	836
Livingston	376	461	580	693	721	Logan	433	434	519	713	817
McDonough	342	403	507	650	850	Marion	370	424	507	648	714
Mason	329	417	507	712	735	Massac	421	422	507	738	762
Montgomery	421	422	507	608	753	Morgan	356	414	545	676	734
Moultrie	337	398	518	653	793	Ogle	428	457	599	783	837
Perry	329	430	507	612	787	Pike	329	402	507	681	702
Pope	413	421	507	668	736	Pulaski	413	421	507	668	736
Putnam	342	400	526	665	727	Randolph	330	385	507	672	824
Richland	378	457	507	698	836	Saline	330	425	507	686	889
Schuyler	329	402	507	681	702	Scott	349	389	510	646	679
Shelby	421	422	507	661	748	Stephenson	380	444	585	700	722
Union	422	423	507	622	772	Wabash	413	421	507	668	736
Warren	330	386	507	633	721	Washington	351	402	507	651	671
Wayne	329	399	507	645	664	White	413	421	507	668	736
Whiteside	387	456	562	696	715	Williamson	331	387	507	731	753

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	502	503	604	777	809	Madison
Bloomington, IN HMFA	473	548	668	949	981	Monroe
Carroll County, IN HMFA	366	430	564	742	764	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	436	516	668	894	929	Dearborn, Franklin, Ohio
Columbus, IN MSA	582	583	700	858	918	Bartholomew
Elkhart-Goshen, IN MSA	479	534	660	830	869	Elkhart
Evansville, IN-KY HMFA	386	450	560	691	751	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	459	488	610	761	782	Allen, Wells, Whitley
Gary, IN HMFA	497	619	755	902	931	Lake, Newton, Porter
Gibson County, IN HMFA	435	436	521	666	916	Gibson
Greene County, IN HMFA	403	404	519	753	779	Greene
Indianapolis, IN HMFA	504	584	693	897	949	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	499	500	621	810	835	Jasper
Kokomo, IN MSA	483	489	620	791	813	Howard, Tipton
Lafayette, IN HMFA	480	567	696	906	1036	Benton, Tippecanoe
Louisville, KY-IN HMFA	426	492	584	816	867	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	416	481	610	810	833	LaPorte
Muncie, IN MSA	498	509	616	830	871	Delaware
Owen County, IN HMFA	445	447	535	677	939	Owen
Putnam County, IN HMFA	501	502	604	722	814	Putnam
South Bend-Mishawaka, IN HMFA	478	532	640	821	845	St. Joseph
Sullivan County, IN HMFA	336	394	519	621	639	Sullivan
Terre Haute, IN HMFA	370	422	543	670	771	Clay, Vermillion, Vigo
Washington County, IN HMFA	395	442	519	638	850	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	431	468	519	679	801	Blackford	443	445	534	679	734
Cass	377	406	534	680	702	Clinton	460	488	596	744	781
Crawford	370	422	519	641	680	Daviess	431	434	519	675	828
Decatur	502	504	605	784	808	DeKalb	428	458	581	799	821
Dubois	348	418	536	732	753	Fayette	355	440	546	723	744
Fountain	381	458	519	694	726	Fulton	443	460	534	754	778
Grant	454	455	550	694	810	Henry	472	474	568	730	817
Huntington	407	485	573	715	866	Jackson	485	486	591	759	921
Jay	337	413	519	703	726	Jefferson	386	414	545	652	807
Jennings	375	442	578	700	964	Knox	361	411	519	643	802
Kosciusko	394	460	605	770	896	LaGrange	479	480	576	694	771
Lawrence	378	446	582	695	716	Marshall	411	474	589	776	800
Martin	370	408	519	639	747	Miami	337	396	519	756	815
Montgomery	384	452	575	783	825	Noble	510	512	615	735	756
Orange	335	394	519	653	713	Parke	432	434	519	654	823
Perry	337	395	519	674	695	Pike	337	398	519	672	693
Pulaski	448	450	541	718	741	Randolph	431	432	519	740	763
Ripley	496	497	599	721	825	Rush	469	470	565	677	742
Scott	382	427	541	699	809	Spencer	337	398	519	672	693

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	450	475	543	718	755	Steuben	434	495	651	785	808
Switzerland	409	444	584	731	815	Union	368	449	567	706	729
Wabash	339	395	519	709	808	Warren	370	454	569	700	813
Wayne	372	437	548	744	767	White	394	545	605	723	1021

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	523	552	682	976	1155	Story
Benton County, IA HMFA	333	393	513	639	855	Benton
Bremer County, IA HMFA	338	416	518	620	838	Bremer
Cedar Rapids, IA HMFA	398	464	611	866	984	Linn
Davenport-Moline-Rock Island, IA-IL MSA	422	470	592	755	787	Scott
Des Moines-West Des Moines, IA MSA	473	565	689	883	983	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	383	412	542	728	793	Dubuque
Iowa City, IA HMFA	454	541	682	994	1163	Johnson
Jones County, IA HMFA	427	428	513	719	741	Jones
Omaha-Council Bluffs, NE-IA HMFA	481	547	682	910	936	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	399	469	615	774	797	Woodbury
Washington County, IA HMFA	339	408	519	662	796	Washington
Waterloo-Cedar Falls, IA HMFA	385	473	566	694	851	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	350	390	513	626	700	Adams	350	390	513	626	700
Allamakee	364	400	513	665	707	Appanoose	333	389	513	648	710
Audubon	383	393	513	675	706	Boone	382	461	587	764	822
Buchanan	426	427	513	662	680	Buena Vista	398	403	527	632	726
Butler	364	400	513	665	707	Calhoun	406	407	513	659	689
Carroll	348	406	536	639	659	Cass	382	466	586	718	774
Cedar	362	399	527	681	737	Cerro Gordo	388	431	567	704	724
Cherokee	383	393	513	675	706	Chickasaw	364	400	513	665	707
Clarke	348	398	523	626	698	Clay	333	389	513	623	780
Clayton	364	400	513	665	707	Clinton	333	390	513	654	747
Crawford	383	405	513	675	706	Davis	350	390	513	626	700
Decatur	350	390	513	626	700	Delaware	362	399	527	681	737
Des Moines	396	433	549	690	777	Dickinson	332	410	513	649	900
Emmet	361	389	513	628	737	Fayette	364	400	513	665	707
Floyd	360	389	513	642	661	Franklin	370	408	513	656	687
Fremont	382	466	586	718	774	Greene	383	393	513	675	706
Hamilton	399	400	513	646	676	Hancock	370	408	513	656	687
Hardin	438	440	526	629	669	Henry	432	434	519	742	764
Howard	364	400	513	665	707	Humboldt	406	407	513	659	689
Ida	383	393	513	675	706	Iowa	397	419	520	680	702
Jackson	362	399	527	681	737	Jasper	399	436	573	729	760

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	429	436	516	650	790
Kossuth	370	408	513	656	687
Louisa	393	440	544	704	745
Lyon	361	389	513	628	737
Marion	382	469	586	724	745
Mitchell	370	408	513	656	687
Monroe	350	390	513	626	700
Muscatine	392	484	602	741	799
Osceola	361	389	513	628	737
Palo Alto	361	389	513	628	737
Pocahontas	406	407	513	659	689
Ringgold	350	390	513	626	700
Shelby	382	466	586	718	774
Tama	397	419	520	680	702
Union	350	390	513	626	700
Wapello	366	426	562	670	699
Webster	391	398	517	715	738
Winneshiek	333	390	513	666	903
Wright	406	407	513	659	689

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keokuk	350	390	513	626	700
Lee	374	435	513	650	669
Lucas	350	390	513	626	700
Mahaska	379	429	547	655	865
Marshall	392	454	567	729	837
Monona	383	393	513	675	706
Montgomery	382	466	586	718	774
O'Brien	361	389	513	628	737
Page	331	390	513	612	630
Plymouth	425	426	513	691	712
Poweshiek	357	416	548	700	722
Sac	383	393	513	675	706
Sioux	417	423	513	694	714
Taylor	350	390	513	626	700
Van Buren	350	390	513	626	700
Wayne	350	390	513	626	700
Winnebago	370	408	513	656	687
Worth	370	408	513	656	687

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	436	437	542	691	738	Franklin
*Kansas City, MO-KS HMFA	518	622	714	966	1016	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	499	513	659	962	1157	Douglas
St. Joseph, MO-KS MSA	343	424	527	663	787	Doniphan
Sumner County, KS HMFA	331	390	512	689	802	Sumner
Topeka, KS MSA	439	478	585	742	780	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	420	470	618	790	889	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	386	390	512	678	738
Atchison	402	447	548	798	962
Barton	332	401	512	680	881
Brown	402	447	548	798	962
Chautauqua	370	412	512	659	718
Cheyenne	383	389	512	655	674
Clay	397	436	536	688	847
Coffey	357	390	512	651	672
Cowley	342	418	512	649	668
Decatur	383	389	512	655	674
Edwards	333	392	512	667	786

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	370	412	512	659	718
Barber	333	392	512	667	786
Bourbon	371	395	512	740	834
Chase	357	390	512	651	672
Cherokee	427	442	512	717	880
Clark	442	446	543	661	725
Cloud	397	404	512	672	694
Comanche	333	392	512	667	786
Crawford	362	424	558	752	838
Dickinson	333	388	512	616	760
Elk	370	412	512	659	718

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ellis	367	416	547	757	792
Finney	450	450	581	705	894
Geary	362	429	527	698	780
Graham	383	389	512	655	674
Gray	442	446	543	661	725
Greenwood	357	390	512	651	672
Harper	333	392	512	667	786
Hodgeman	442	446	543	661	725
Kearny	442	446	543	661	725
Kiowa	333	392	512	667	786
Lane	442	446	543	661	725
Logan	383	389	512	655	674
McPherson	426	427	512	670	689
Marshall	397	436	536	688	847
Mitchell	397	404	512	672	694
Morris	397	436	536	688	847
Nemaha	402	447	548	798	962
Ness	442	446	543	661	725
Osborne	383	389	512	655	674
Pawnee	333	392	512	667	786
Pottawatomie	346	479	532	677	780
Rawlins	383	389	512	655	674
Republic	397	404	512	672	694
Riley	417	451	559	814	981
Rush	333	392	512	667	786
Saline	422	424	558	743	766
Seward	383	471	545	669	811
Sherman	377	389	512	643	663
Stafford	333	392	512	667	786
Stevens	442	446	543	661	725
Trego	383	389	512	655	674
Washington	397	404	512	672	694
Wilson	370	411	512	658	716

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ellsworth	397	404	512	672	694
Ford	469	470	566	697	744
Gove	383	389	512	655	674
Grant	442	446	543	661	725
Greeley	442	446	543	661	725
Hamilton	442	446	543	661	725
Haskell	442	446	543	661	725
Jewell	397	404	512	672	694
Kingman	333	392	512	667	786
Labette	333	398	512	694	714
Lincoln	397	404	512	672	694
Lyon	333	390	512	684	809
Marion	357	390	512	651	672
Meade	442	446	543	661	725
Montgomery	367	410	512	630	784
Morton	442	446	543	661	725
Neosho	332	399	512	609	895
Norton	383	389	512	655	674
Ottawa	397	404	512	672	694
Phillips	383	389	512	655	674
Pratt	333	390	512	664	783
Reno	364	405	532	729	750
Rice	371	404	512	679	700
Rooks	383	389	512	655	674
Russell	383	389	512	655	674
Scott	442	446	543	661	725
Sheridan	383	389	512	655	674
Smith	383	389	512	655	674
Stanton	442	446	543	661	725
Thomas	381	389	512	651	670
Wallace	383	389	512	655	674
Wichita	442	446	543	661	725
Woodson	370	412	512	659	718

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	407	486	591	788	928	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	436	516	668	894	929	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	485	505	586	847	872	Christian, Trigg
Elizabethtown, KY MSA	377	420	507	721	888	Hardin, Larue
Evansville, IN-KY HMFA	386	450	560	691	751	Henderson, Webster
Grant County, KY HMFA	404	487	620	763	855	Grant

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	365	432	519	640	661	Boyd, Greenup
Lexington-Fayette, KY MSA	437	525	647	870	897	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	426	492	584	816	867	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	414	415	497	638	715	Meade
Nelson County, KY HMFA	355	428	518	755	816	Nelson
Owensboro, KY MSA	365	406	534	741	784	Daviess, Hancock, McLean
Shelby County, KY HMFA	497	498	602	792	816	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	338	375	446	544	607	Allen	292	379	446	595	771
Anderson	432	462	610	882	1052	Ballard	366	405	499	639	721
Barren	308	361	468	584	643	Bath	350	379	468	585	604
Bell	293	400	446	532	653	Boyle	376	416	546	654	675
Breathitt	370	389	446	554	579	Breckinridge	366	368	473	632	652
Butler	401	475	578	760	783	Caldwell	371	372	446	565	641
Calloway	445	446	536	660	941	Carlisle	366	405	499	639	721
Carroll	440	441	548	724	787	Carter	294	391	453	540	611
Casey	338	375	446	544	607	Clay	289	401	446	532	548
Clinton	338	375	446	544	607	Crittenden	370	372	446	582	661
Cumberland	338	375	446	544	607	Elliott	392	393	473	601	710
Estill	370	372	446	570	751	Fleming	350	379	468	585	604
Floyd	338	379	446	585	674	Franklin	442	469	617	837	860
Fulton	366	405	499	639	721	Garrard	378	423	508	607	890
Graves	358	359	446	533	649	Grayson	371	372	446	582	682
Green	336	372	446	539	602	Harlan	369	397	446	549	694
Harrison	385	387	506	663	685	Hart	332	362	446	569	663
Hickman	366	405	499	639	721	Hopkins	370	371	446	559	782
Jackson	370	389	446	539	555	Johnson	291	380	446	608	625
Knott	370	389	446	558	579	Knox	292	353	446	629	650
Laurel	370	401	446	548	749	Lawrence	289	338	446	595	614
Lee	370	389	446	558	579	Leslie	370	389	446	558	579
Letcher	370	389	446	554	579	Lewis	350	379	468	585	604
Lincoln	322	441	489	585	774	Livingston	369	370	446	574	652
Logan	397	431	479	656	727	Lyon	435	443	525	681	706
McCracken	335	422	518	695	716	McCreary	371	400	446	575	590
Madison	382	405	519	732	858	Magoffin	371	374	446	549	574
Marion	366	368	473	632	652	Marshall	400	402	484	631	820
Martin	371	374	446	549	574	Mason	301	385	465	678	779
Menifee	350	379	468	585	604	Mercer	406	432	490	645	760
Metcalfe	332	362	446	569	663	Monroe	332	362	446	569	663
Montgomery	359	419	553	660	680	Morgan	350	379	468	585	604
Muhlenberg	368	369	446	566	582	Nicholas	457	458	599	734	809
Ohio	368	392	446	591	649	Owen	490	559	638	859	1118

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	370	389	446	558	579
Pike	378	379	456	547	563
Pulaski	317	351	446	550	583
Rockcastle	370	389	446	539	555
Russell	338	375	446	544	607
Taylor	293	401	446	575	755
Union	394	396	477	581	611
Wayne	292	356	446	578	595
Wolfe	370	389	446	558	579
Perry	370	390	446	533	654
Powell	339	428	523	626	645
Robertson	350	379	468	585	604
Rowan	395	438	487	611	631
Simpson	400	470	618	768	792
Todd	435	443	525	681	706
Washington	366	368	473	632	652
Whitley	342	361	475	567	584

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	389	421	501	652	670	Grant, Rapides
Baton Rouge, LA HMFA	596	649	749	955	1050	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	433	436	541	710	810	Lafourche, Terrebonne
Iberville Parish, LA HMFA	368	369	444	601	619	Iberville
Lafayette, LA MSA	448	514	570	731	927	Lafayette, St. Martin
Lake Charles, LA MSA	421	474	577	712	1002	Calcasieu, Cameron
Monroe, LA MSA	383	433	538	714	737	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	755	836	978	1256	1298	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	436	502	586	744	767	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	360	360	438	554	635
Assumption	408	410	492	600	617
Beauregard	371	381	448	652	785
Caldwell	346	369	438	554	618
Claiborne	401	408	483	577	632
East Carroll	346	369	438	554	618
Franklin	346	369	438	554	618
Jackson	346	369	438	554	618
La Salle	332	358	438	555	671
Madison	346	369	438	554	618
Natchitoches	419	420	504	604	780
Richland	346	369	438	554	618
St. James	418	488	598	734	756
St. Mary	396	404	485	634	654
Tensas	346	369	438	554	618
Vernon	359	395	438	636	759
Webster	352	353	446	601	620
Winn	364	394	438	552	588
Allen	363	364	438	636	706
Avoyelles	283	386	438	596	712
Bienville	401	408	483	577	632
Catahoula	332	358	438	555	671
Concordia	332	358	438	568	671
Evangeline	362	364	438	561	577
Iberia	414	425	501	619	721
Jefferson Davis	364	365	438	555	569
Lincoln	429	443	516	671	694
Morehouse	372	373	464	556	602
Red River	401	408	483	577	632
Sabine	401	408	483	577	632
St. Landry	286	343	438	591	629
Tangipahoa	378	439	552	661	785
Vermilion	364	365	438	600	621
Washington	364	367	438	583	601
West Carroll	346	369	438	554	618

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MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	473	552	704	895	1010	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	502	600	773	923	1183	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	389	488	596	755	836	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	481	482	579	724	888	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	638	757	981	1236	1324	Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	605	605	726	876	1257	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	553	575	731	874	955	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	825	830	995	1449	1579	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	367	452	542	707	779	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	456	492	599	715	928	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	498	574	668	941	968	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec County, ME	395	473	589	804	859	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

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MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	451	596	680	921	1062	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	544	584	705	852	878	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford County, ME	379	504	581	774	970	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	473	539	667	846	906	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	378	469	556	785	832	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	530	568	685	840	893	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town,

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	456	493	588	729	794	Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	694	784	941	1208	1492	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1121	1165	1352	1837	2140	Columbia city
Cumberland, MD-WV MSA	365	442	519	700	817	Allegany
Hagerstown, MD HMFA	459	526	673	971	1002	Washington
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	676	773	923	1105	1314	Cecil
Salisbury, MD HMFA	447	556	653	809	928	Wicomico
Somerset County, MD HMFA	440	469	552	683	898	Somerset
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	995	1134	1286	1659	2171	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	500	516	604	817	839
Garrett	337	418	519	670	887
St. Mary's	722	750	976	1282	1688
Worcester	539	560	649	948	1009
Dorchester	377	453	577	778	801
Kent	563	563	678	832	1117
Talbot	587	588	708	958	1012

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	651	762	1003	1197	1235	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town,

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MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Yarmouth town
Berkshire County, MA (part) HMFA.....	516	579	668	914	941	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1097	1164	1366	1634	1795	Essex County towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop town
Brockton, MA HMFA.....	868	904	1138	1361	1706	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town
Eastern Worcester County, MA HMFA.....	751	840	1105	1320	1939	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town,

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	876	1160	1349	1613	2332	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	584	671	842	1031	1120	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	495	578	716	955	1153	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	699	889	1075	1284	1323	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	761	911	1171	1398	1534	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	539	691	791	948	1278	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	487	569	706	907	935	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
*Providence-Fall River, RI-MA HMFA	795	869	1014	1214	1546	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	556	661	840	1005	1167	Franklin County towns of Sunderland town Hampden County towns of Agawam city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield town, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	677	854	1043	1280	1381	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	415	570	639	762	980	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Worcester, MA HMFA	635	731	890	1064	1129	Worcester County towns of Auburn town, Barre town,

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	780	990	1178	1408	1451	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	911	1261	1400	1674	1725	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	685	768	934	1175	1210	Washtenaw
Barry County, MI HMFA	379	478	584	842	926	Barry
Battle Creek, MI MSA	434	498	610	743	765	Calhoun
Bay City, MI MSA	402	449	546	729	750	Bay
Cass County, MI HMFA	423	484	535	709	823	Cass
Detroit-Warren-Livonia, MI HMFA	582	663	793	948	978	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	512	541	649	804	829	Genesee
*Grand Rapids-Wyoming, MI HMFA	544	581	700	893	936	Kent
Holland-Grand Haven, MI MSA	549	557	669	926	999	Ottawa
Ionia County, MI HMFA	404	469	572	685	762	Ionia
Jackson, MI MSA	455	508	606	753	776	Jackson
Kalamazoo-Portage, MI MSA	486	518	630	837	874	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	505	549	679	860	933	Clinton, Eaton, Ingham
Livingston County, MI HMFA	690	728	856	1234	1502	Livingston
Monroe, MI MSA	617	619	745	973	1071	Monroe
Muskegon-Norton Shores, MI MSA	405	423	549	726	747	Muskegon
Newaygo County, MI HMFA	445	470	537	727	748	Newaygo
Niles-Benton Harbor, MI MSA	427	479	584	714	916	Berrien
Saginaw-Saginaw Township North, MI MSA	421	482	608	728	748	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	366	424	519	699	740	Alger	343	435	519	640	720
Allegan	435	525	629	788	845	Alpena	410	466	519	717	793
Antrim	453	454	548	762	961	Arenac	413	435	519	694	769
Baraga	343	435	519	640	720	Benzie	560	561	680	849	874
Branch	434	464	610	731	752	Charlevoix	475	514	570	820	846
Cheboygan	366	425	525	705	741	Chippewa	346	431	532	645	722

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clare	380	395	519	699	720
Delta	360	429	519	683	724
Emmet	398	491	611	824	871
Gogebic	358	428	519	635	755
Gratiot	433	434	519	692	773
Houghton	369	432	519	675	773
Iosco	424	449	519	755	783
Isabella	431	466	519	747	815
Keweenaw	358	428	519	635	755
Leelanau	560	561	680	849	874
Luce	358	438	519	681	742
Manistee	417	432	567	679	761
Mason	337	397	519	679	746
Menominee	431	432	519	685	913
Missaukee	402	483	570	749	823
Montmorency	367	426	532	701	742
Ogemaw	399	419	519	671	742
Osceola	431	432	519	711	895
Otsego	428	499	657	788	828
Roscommon	431	433	519	674	830
Sanilac	432	466	519	731	751
Shiawassee	374	460	573	789	880
Wexford	366	484	564	746	822

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crawford	366	426	531	700	742
Dickinson	337	410	519	626	853
Gladwin	413	435	519	694	769
Grand Traverse	572	574	719	941	971
Hillsdale	366	451	537	755	825
Huron	431	434	519	688	836
Iron	358	428	519	635	755
Kalkaska	449	488	542	658	679
Lake	398	434	519	679	817
Lenawee	434	544	668	852	930
Mackinac	346	431	533	643	700
Marquette	336	436	519	653	709
Mecosta	382	454	550	731	964
Midland	424	483	595	820	876
Montcalm	403	468	535	722	745
Oceana	378	438	522	632	673
Ontonagon	358	428	519	635	755
Oscoda	366	424	519	699	740
Presque Isle	366	424	519	699	740
St. Joseph	432	482	568	701	786
Schoolcraft	358	438	519	681	742
Tuscola	377	430	546	655	784

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	361	440	555	697	888	Carlton, St. Louis
Fargo, ND-MN MSA	384	456	580	837	967	Clay
Grand Forks, ND-MN MSA	374	469	576	730	992	Polk
La Crosse, WI-MN MSA	370	433	570	756	929	Houston
Minneapolis-St. Paul-Bloomington, MN-WI MSA	600	707	858	1123	1262	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	536	572	752	975	1018	Dodge, Olmsted
St. Cloud, MN MSA	441	486	582	823	956	Benton, Stearns
Wabasha County, MN HMFA	368	410	525	657	922	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	372	437	574	716	775
Beltrami	360	425	541	744	949
Blue Earth	424	530	612	881	1077
Cass	337	431	519	654	674
Clearwater	363	409	519	655	910

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	336	399	519	650	675
Big Stone	336	409	519	663	686
Brown	383	436	523	626	644
Chippewa	398	432	519	621	640
Cook	337	428	519	650	670

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cottonwood	380	415	519	662	692
Douglas	366	436	548	794	869
Fillmore	357	430	536	699	877
Goodhue	415	486	639	813	880
Hubbard	363	409	519	655	910
Jackson	380	415	519	662	692
Kandiyohi	417	428	531	715	738
Koochiching	337	431	519	654	674
Lake	337	428	519	650	670
Le Sueur	460	475	572	796	821
Lyon	395	444	546	681	701
Mahnomen	363	409	519	655	910
Martin	430	431	519	754	776
Mille Lacs	435	448	590	731	812
Mower	347	407	519	645	664
Nicollet	480	493	579	759	783
Norman	342	409	519	661	774
Pennington	339	399	519	655	716
Pipestone	380	415	519	662	692
Red Lake	342	409	519	661	774
Renville	416	434	535	699	719
Rock	380	415	519	662	692
Sibley	416	434	535	699	719
Stevens	337	424	519	625	844
Todd	374	420	519	626	832
Wadena	374	420	519	626	832
Watonwan	380	415	519	662	692
Winona	378	446	582	804	1021

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crow Wing	383	448	591	758	887
Faribault	380	415	519	662	692
Freeborn	337	394	519	619	816
Grant	336	409	519	663	686
Itasca	350	433	539	653	765
Kanabec	405	475	624	779	842
Kittson	342	409	519	661	774
Lac qui Parle	398	432	519	621	640
Lake of the Woods	363	409	519	655	910
Lincoln	398	432	519	621	640
McLeod	482	483	599	858	885
Marshall	342	409	519	661	774
Meeker	416	461	535	699	719
Morrison	346	412	533	637	935
Murray	380	415	519	662	692
Nobles	342	428	519	689	710
Otter Tail	338	402	519	633	652
Pine	415	450	581	759	783
Pope	336	409	519	663	686
Redwood	398	432	519	621	640
Rice	504	526	692	827	961
Roseau	337	400	519	647	757
Steele	402	489	617	776	1012
Swift	336	409	519	663	686
Traverse	336	409	519	663	686
Waseca	372	437	574	687	718
Wilkin	336	409	519	663	686
Yellow Medicine	398	432	519	621	640

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	517	548	640	834	857	Hancock, Harrison, Stone
Hattiesburg, MS MSA	405	461	549	799	825	Forrest, Lamar, Perry
Jackson, MS HMFA	487	550	638	768	791	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	307	383	473	691	712	Marshall
Memphis, TN-MS-AR HMFA	548	596	662	882	910	DeSoto
Pascagoula, MS MSA	445	509	611	841	902	George, Jackson
Simpson County, MS HMFA	392	413	473	567	818	Simpson
Tate County, MS HMFA	370	429	477	668	838	Tate
Tunica County, MS HMFA	404	486	622	747	916	Tunica

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	326	451	500	600	859	Alcorn	393	424	473	657	832
Amite	378	425	473	572	650	Attala	388	400	473	634	794
Benton	432	483	536	643	660	Bolivar	385	435	500	600	879
Calhoun	388	400	473	634	794	Carroll	319	358	473	628	657
Chickasaw	357	438	513	615	646	Choctaw	388	400	473	634	794
Claiborne	393	394	473	593	695	Clarke	393	437	502	657	680
Clay	392	394	473	689	711	Coahoma	402	416	549	656	964
Covington	393	394	473	593	695	Franklin	378	425	473	572	650
Greene	359	384	473	618	650	Grenada	368	404	473	666	793
Holmes	399	461	513	614	643	Humphreys	319	358	473	628	657
Issaquena	399	461	513	614	643	Itawamba	307	418	473	625	738
Jasper	372	402	473	569	605	Jefferson	393	394	473	593	695
Jefferson Davis	393	394	473	593	695	Jones	320	371	473	623	643
Kemper	393	437	502	657	680	Lafayette	423	500	617	739	761
Lauderdale	398	446	523	719	741	Lawrence	393	394	473	593	695
Leake	372	402	473	569	605	Lee	429	447	516	704	794
Leflore	307	360	473	628	739	Lincoln	345	426	473	648	831
Lowndes	413	423	496	721	743	Marion	372	422	473	621	707
Monroe	392	418	473	592	633	Montgomery	388	400	473	634	794
Neshoba	306	413	473	563	827	Newton	393	437	502	657	680
Noxubee	399	414	481	659	703	Oktibbeha	376	456	556	724	746
Panola	307	425	473	567	653	Pearl River	416	417	499	609	859
Pike	392	425	473	622	642	Pontotoc	392	393	473	643	662
Prentiss	307	358	473	567	584	Quitman	385	412	486	582	730
Scott	393	418	473	566	610	Sharkey	399	461	513	614	643
Smith	372	402	473	569	605	Sunflower	343	422	473	674	695
Tallahatchie	319	358	473	628	657	Tippah	393	427	473	616	767
Tishomingo	307	400	473	594	614	Union	320	445	493	590	714
Walthall	378	425	473	572	650	Warren	481	528	589	704	725
Washington	326	424	500	649	794	Wayne	359	384	473	618	650
Webster	388	400	473	634	794	Wilkinson	378	425	473	572	650
Winston	357	438	513	615	646	Yalobusha	388	400	473	634	794
Yazoo	392	415	473	565	584						

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	311	366	478	671	693	Bates
Calloway County, MO HMFA	406	410	518	708	729	Callaway
Columbia, MO MSA	392	469	582	847	945	Boone, Howard
Dallas County, MO HMFA	311	404	478	652	674	Dallas
Jefferson City, MO HMFA	365	402	522	740	822	Cole, Osage
Joplin, MO MSA	340	408	520	662	681	Jasper, Newton

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Kansas City, MO-KS HMFA	518	622	714	966	1016	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	380	381	478	680	702	McDonald
Moniteau County, MO HMFA	313	366	483	584	779	Moniteau
Polk County, MO HMFA	311	364	478	696	799	Polk
Springfield, MO HMFA	358	422	540	770	879	Christian, Greene, Webster
St. Joseph, MO-KS MSA	343	424	527	663	787	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	497	539	670	863	903	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	366	426	478	629	702	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	344	399	527	692	765	Atchison	383	384	478	595	737
Audrain	396	397	478	603	766	Barry	312	393	478	623	644
Barton	311	392	478	579	635	Benton	311	370	478	663	687
Bollinger	349	392	515	658	762	Butler	395	396	478	663	708
Camden	435	442	543	791	813	Cape Girardeau	353	412	543	702	884
Carroll	416	417	526	660	736	Carter	396	397	478	664	714
Cedar	311	370	478	663	687	Chariton	416	417	526	660	736
Clark	352	362	478	591	697	Cooper	380	400	520	694	808
Crawford	311	394	478	636	838	Dade	367	387	508	650	702
Daviess	383	384	478	595	737	Dent	358	389	478	630	802
Douglas	353	396	478	632	733	Dunklin	370	403	478	611	682
Gasconade	339	369	478	598	761	Gentry	383	384	478	595	737
Grundy	383	384	478	595	737	Harrison	383	384	478	595	737
Henry	344	399	527	632	651	Hickory	311	370	478	663	687
Holt	383	384	478	595	737	Howell	329	378	478	593	839
Iron	349	392	515	658	762	Johnson	419	446	541	723	814
Knox	352	362	478	591	697	Laclede	392	393	478	625	820
Lawrence	396	397	478	651	750	Lewis	352	362	478	591	697
Linn	352	362	478	591	697	Livingston	376	377	478	639	836
Macon	386	388	478	572	615	Madison	349	392	515	658	762
Maries	358	389	478	630	802	Marion	314	365	482	627	645
Mercer	383	384	478	595	737	Miller	399	400	478	638	665
Mississippi	335	364	478	631	728	Monroe	313	366	483	621	639
Montgomery	313	366	483	621	639	Morgan	403	404	485	659	767
New Madrid	340	391	478	638	656	Nodaway	422	423	526	629	734
Oregon	353	396	478	632	733	Ozark	353	396	478	632	733
Pemiscot	312	365	478	601	619	Perry	355	387	507	607	892
Pettis	417	418	541	675	808	Phelps	354	381	478	661	814
Pike	310	363	478	626	684	Pulaski	408	441	490	712	779
Putnam	352	362	478	591	697	Ralls	313	366	483	621	639
Randolph	322	379	496	629	647	Reynolds	396	397	478	664	714

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	396	397	478	664	714
Ste. Genevieve	349	392	515	658	762
Saline	315	369	486	630	740
Scotland	352	362	478	591	697
Shannon	353	396	478	632	733
Stoddard	370	385	478	652	705
Sullivan	352	362	478	591	697
Texas	377	398	478	658	758
Wayne	396	397	478	664	714
Wright	350	367	478	603	621
St. Clair	311	370	478	663	687
St. Francois	414	416	500	698	727
Schuyler	352	362	478	591	697
Scott	397	398	498	621	734
Shelby	352	362	478	591	697
Stone	352	410	542	711	782
Taney	453	454	573	684	870
Vernon	333	396	479	671	692
Worth	383	384	478	595	737

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	389	462	598	807	971	Carbon, Yellowstone
Great Falls, MT MSA	356	429	550	744	895	Cascade
Missoula, MT MSA	460	529	668	866	1036	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	430	501	658	851	1032
Blaine	348	415	526	701	801
Carter	421	437	519	700	744
Custer	338	470	519	756	782
Dawson	421	437	519	700	744
Fallon	421	437	519	700	744
Flathead	388	477	599	847	1039
Garfield	421	437	519	700	744
Golden Valley	421	437	519	700	744
Hill	337	416	519	748	795
Judith Basin	348	415	526	701	801
Lewis and Clark	414	473	591	858	886
Lincoln	372	457	571	790	886
Madison	430	501	658	851	1032
Mineral	460	520	653	837	1002
Park	409	477	627	750	991
Phillips	421	437	519	700	744
Powder River	421	437	519	700	744
Prairie	421	437	519	700	744
Richland	421	437	519	700	744
Rosebud	386	401	519	640	682
Sheridan	421	437	519	700	744
Stillwater	421	437	519	700	744
Teton	348	415	526	701	801
Big Horn	387	403	519	643	686
Broadwater	383	439	558	754	810
Chouteau	348	415	526	701	801
Daniels	421	437	519	700	744
Deer Lodge	383	439	558	754	810
Fergus	378	394	519	629	670
Gallatin	439	523	680	908	1191
Glacier	348	415	526	701	801
Granite	383	439	558	754	810
Jefferson	383	439	558	754	810
Lake	456	459	556	749	807
Liberty	348	415	526	701	801
McCone	421	437	519	700	744
Meagher	430	501	658	851	1032
Musselshell	421	437	519	700	744
Petroleum	421	437	519	700	744
Pondera	348	415	526	701	801
Powell	383	439	558	754	810
Ravalli	437	476	611	800	947
Roosevelt	421	437	519	700	744
Sanders	372	457	571	790	886
Silver Bow	377	406	522	682	746
Sweet Grass	421	437	519	700	744
Toole	348	415	526	701	801

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	421	437	519	700	744	Valley	421	437	519	700	744
Wheatland	421	437	519	700	744	Wibaux	421	437	519	700	744

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	430	483	614	861	1044	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	481	547	682	910	936	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	496	498	598	872	898	Saunders
Seward County, NE HMFA	335	414	517	687	872	Seward
Sioux City, IA-NE-SD MSA	399	469	615	774	797	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	359	419	551	697	717	Antelope	430	431	517	648	669
Arthur	390	451	517	682	704	Banner	387	392	517	671	804
Blaine	430	431	518	640	746	Boone	430	431	517	648	669
Box Butte	387	392	517	677	804	Boyd	387	392	517	671	804
Brown	387	392	517	671	804	Buffalo	389	456	600	816	949
Burt	430	431	517	648	669	Butler	429	430	517	656	687
Cedar	430	431	517	648	669	Chase	390	451	517	682	704
Cherry	387	392	517	671	804	Cheyenne	387	392	517	671	804
Clay	362	424	558	714	829	Colfax	430	431	517	648	669
Cuming	430	431	517	648	669	Custer	430	431	518	640	746
Dawes	334	394	517	619	770	Dawson	445	483	538	655	675
Deuel	387	392	517	671	804	Dodge	408	479	629	751	917
Dundy	390	451	517	682	704	Fillmore	429	430	517	656	687
Franklin	362	424	558	714	829	Frontier	390	451	517	682	704
Furnas	390	451	517	682	704	Gage	430	431	517	631	650
Garden	387	392	517	671	804	Garfield	430	431	518	640	746
Gosper	390	451	517	682	704	Grant	390	451	517	682	704
Greeley	430	431	518	640	746	Hall	435	437	547	684	884
Hamilton	430	431	518	640	746	Harlan	362	424	558	714	829
Hayes	390	451	517	682	704	Hitchcock	390	451	517	682	704
Holt	387	392	517	671	804	Hooker	390	451	517	682	704
Howard	430	431	518	640	746	Jefferson	429	430	517	656	687
Johnson	429	430	517	656	687	Kearney	362	424	558	714	829
Keith	390	451	517	682	704	Keya Paha	387	392	517	671	804
Kimball	387	392	517	671	804	Knox	430	431	517	648	669
Lincoln	377	424	540	662	834	Logan	390	451	517	682	704
Loup	430	431	518	640	746	McPherson	390	451	517	682	704
Madison	381	402	528	720	742	Merrick	430	431	518	640	746
Morrill	387	392	517	671	804	Nance	430	431	517	648	669
Nemaha	429	430	517	656	687	Nuckolls	362	424	558	714	829

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	429	431	517	641	672
Perkins	390	451	517	682	704
Pierce	430	431	517	648	669
Polk	429	430	517	656	687
Richardson	429	430	517	656	687
Saline	456	480	549	671	693
Sheridan	387	392	517	671	804
Sioux	387	392	517	671	804
Thayer	429	430	517	656	687
Thurston	430	431	517	648	669
Wayne	430	431	517	648	669
Wheeler	430	431	518	640	746

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pawnee	429	430	517	656	687
Phelps	362	424	558	714	829
Platte	430	431	517	754	777
Red Willow	357	466	517	752	776
Rock	387	392	517	671	804
Scotts Bluff	429	430	517	659	869
Sherman	430	431	518	640	746
Stanton	430	431	517	648	669
Thomas	390	451	517	682	704
Valley	430	431	518	640	746
Webster	362	424	558	714	829
York	365	431	564	684	822

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	547	659	794	1157	1395	Carson
*Las Vegas-Paradise, NV MSA	643	754	891	1237	1503	Clark
Reno-Sparks, NV MSA	617	737	911	1324	1600	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	590	591	743	940	1104
Elko	532	578	750	935	1203
Eureka	463	535	682	906	1002
Lander	463	535	682	906	1002
Lyon	488	549	722	1052	1084
Nye	423	588	653	951	980
White Pine	463	535	682	906	1002

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Douglas	617	760	923	1285	1424
Esmeralda	463	535	682	906	1002
Humboldt	466	546	717	858	883
Lincoln	463	535	682	906	1002
Mineral	463	535	682	906	1002
Pershing	463	535	682	906	1002

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1097	1164	1366	1634	1795	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	623	633	831	1211	1459	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	699	889	1075	1284	1323	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	682	837	1001	1196	1232	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	760	894	1118	1495	1600	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	671	792	988	1304	1471	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	850	851	1024	1354	1396	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	499	614	766	1011	1300	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	553	584	770	1047	1286	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	613	654	820	989	1204	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	359	470	552	774	869	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	543	598	758	1020	1075	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	555	656	857	1058	1357	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	463	560	714	967	1045	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City, NJ MSA	734	808	964	1222	1371	Atlantic
Bergen-Passaic, NJ HMFA	927	1037	1163	1436	1654	Bergen, Passaic
Jersey City, NJ HMFA	936	989	1154	1399	1506	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	1031	1068	1257	1578	1860	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	830	958	1170	1525	1654	Monmouth, Ocean
Newark, NJ HMFA	761	930	1063	1272	1407	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	650	663	834	1093	1125	Cape May
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	676	773	923	1105	1314	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	784	902	1084	1295	1454	Mercer
Vineland-Millville-Bridgeton, NJ MSA	703	706	889	1080	1138	Cumberland
Warren County, NJ HMFA	802	898	1050	1257	1294	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	502	591	746	1086	1303	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	448	474	571	755	851	San Juan
Las Cruces, NM MSA	433	467	521	719	798	Dona Ana

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NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	578	717	872	1141	1365	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	350	394	472	688	708	Chaves	376	377	482	630	650
Cibola	393	424	472	686	745	Colfax	418	446	502	634	659
Curry	393	407	472	639	831	De Baca	392	404	472	637	775
Eddy	315	402	472	633	769	Grant	377	437	497	700	720
Guadalupe	461	467	556	698	728	Harding	392	404	472	637	775
Hidalgo	350	394	472	688	708	Lea	391	425	472	621	654
Lincoln	366	461	562	708	987	Los Alamos	587	684	898	1078	1110
Luna	392	425	472	602	723	McKinley	372	437	575	687	890
Mora	461	467	556	698	728	Otero	361	427	472	690	831
Quay	392	404	472	637	775	Rio Arriba	420	428	506	655	727
Roosevelt	391	402	472	654	809	San Miguel	395	425	524	696	809
Sierra	306	380	472	690	830	Socorro	393	394	472	565	801
Taos	559	608	673	806	830	Union	392	404	472	637	775

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	594	616	752	900	984	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	478	480	574	749	879	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	512	513	616	762	841	Erie, Niagara
Elmira, NY MSA	524	525	630	810	844	Chemung
Glens Falls, NY MSA	498	526	662	835	941	Warren, Washington
Ithaca, NY MSA	642	660	773	935	970	Tompkins
Kingston, NY MSA	620	672	805	1020	1267	Ulster
Nassau-Suffolk, NY HMFA	994	1149	1356	1799	1961	Nassau, Suffolk
New York, NY HMFA	988	1069	1189	1462	1645	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	737	866	1060	1300	1384	Dutchess, Orange
Rochester, NY MSA	511	564	690	829	878	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	510	511	616	788	854	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	494	495	596	731	830	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1006	1200	1395	1682	2074	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	463	465	557	694	853	Cattaraugus	468	470	565	742	852
Cayuga	495	496	595	792	919	Chautauqua	466	469	562	725	792
Chenango	473	476	570	718	1001	Clinton	533	535	641	814	1058
Columbia	583	594	701	847	903	Cortland	508	509	622	791	970
Delaware	477	480	575	711	936	Essex	501	502	603	802	872
Franklin	460	461	551	707	783	Fulton	394	481	608	728	773
Genesee	541	542	652	808	915	Greene	503	544	662	861	937
Hamilton	507	508	610	760	881	Jefferson	525	527	633	816	857

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	466	469	562	703	785	Montgomery	461	495	555	702	760
Otsego	495	507	596	792	824	St. Lawrence	468	469	564	714	780
Schuyler	509	511	613	817	844	Seneca	538	540	647	851	1077
Steuben	498	499	600	770	850	Sullivan	512	568	729	873	1022
Wyoming	484	498	584	850	928	Yates	496	503	597	773	796

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	432	464	519	730	770	Anson
Asheville, NC HMFA	465	543	620	831	1089	Buncombe, Henderson, Madison
Burlington, NC MSA	580	601	700	951	979	Alamance
Charlotte-Gastonia-Concord, NC-SC HMFA	588	637	707	891	1036	Cabarrus, Gaston, Mecklenburg, Union
Durham, NC HMFA	511	700	785	1026	1106	Chatham, Durham, Orange
Fayetteville, NC HMFA	507	548	612	869	1028	Cumberland
Goldsboro, NC MSA	392	465	544	681	910	Wayne
Greene County, NC HMFA	431	432	519	733	757	Greene
Greensboro-High Point, NC HMFA	554	632	705	893	955	Guilford, Randolph
Greenville, NC HMFA	453	470	579	802	829	Pitt
Haywood County, NC HMFA	442	443	552	715	925	Haywood
Hickory-Lenoir-Morganton, NC MSA	457	480	552	708	825	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	470	510	565	773	943	Hoke
Jacksonville, NC MSA	463	496	557	782	918	Onslow
Pender County, NC HMFA	464	466	560	736	757	Pender
Person County, NC HMFA	456	457	551	658	754	Person
Raleigh-Cary, NC MSA	682	764	850	1068	1107	Franklin, Johnston, Wake
Rockingham County, NC HMFA	426	451	534	663	684	Rockingham
Rocky Mount, NC MSA	391	472	601	746	769	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	700	735	844	1164	1458	Currituck
Wilmington, NC HMFA	533	589	711	996	1025	Brunswick, New Hanover
Winston-Salem, NC MSA	485	552	640	872	1025	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	386	453	519	681	702	Ashe	430	431	519	686	811
Avery	401	495	585	700	826	Beaufort	338	441	519	625	643
Bertie	356	451	519	621	640	Bladen	337	409	519	756	817
Camden	385	502	593	801	821	Carteret	478	478	575	837	1009
Caswell	437	438	536	655	684	Cherokee	337	437	519	754	909
Chowan	385	502	593	801	821	Clay	431	433	519	681	793
Cleveland	514	515	619	815	916	Columbus	363	468	519	622	640
Craven	435	495	568	766	957	Dare	590	591	725	958	986
Davidson	468	469	565	736	841	Duplin	431	466	519	657	677
Gates	385	502	593	801	821	Graham	431	433	519	681	793
Granville	481	482	579	723	859	Halifax	338	469	519	660	757
Harnett	445	483	536	724	941	Hertford	338	466	519	681	700

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	385	502	593	801	821
Jackson	476	493	586	769	794
Lee	382	523	590	725	1035
Lincoln	371	513	571	690	709
Macon	395	429	553	672	970
Mitchell	401	495	585	700	826
Moore	478	479	603	867	1058
Pamlico	347	441	519	653	672
Perquimans	385	502	593	801	821
Richmond	373	468	519	652	673
Rowan	513	555	616	879	939
Sampson	431	440	519	721	913
Stanly	406	438	536	730	794
Swain	431	433	519	681	793
Tyrrell	385	502	593	801	821
Warren	441	442	530	648	666
Watauga	433	529	665	809	1044
Wilson	491	492	597	715	758

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Iredell	523	528	631	836	1091
Jones	438	473	566	783	996
Lenoir	393	395	519	620	891
McDowell	376	448	579	715	735
Martin	431	457	519	672	691
Montgomery	430	467	519	647	911
Northampton	339	457	519	660	679
Pasquotank	381	493	586	851	876
Polk	485	486	596	745	768
Robeson	370	447	519	623	693
Rutherford	475	477	583	698	719
Scotland	431	432	548	666	830
Surry	388	467	519	693	713
Transylvania	342	476	527	665	701
Vance	431	432	520	623	642
Washington	363	489	558	670	687
Wilkes	380	435	519	666	693
Yancey	430	431	519	620	638

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	412	431	536	776	798	Burleigh, Morton
Fargo, ND-MN MSA	384	456	580	837	967	Cass
Grand Forks, ND-MN MSA	374	469	576	730	992	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	343	399	489	648	677
Benson	400	402	489	674	850
Bottineau	374	411	511	719	784
Burke	374	411	511	719	784
Dickey	400	402	489	674	850
Dunn	343	399	489	648	677
Emmons	374	411	511	719	784
Golden Valley	343	399	489	648	677
Griggs	400	402	489	674	850
Kidder	374	411	511	719	784
Logan	374	411	511	719	784
McIntosh	374	411	511	719	784
McLean	374	411	511	719	784
Mountrail	374	411	511	719	784
Oliver	343	399	489	648	677

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	405	408	489	684	859
Billings	343	399	489	648	677
Bowman	343	399	489	648	677
Cavalier	400	402	489	674	850
Divide	343	399	489	648	677
Eddy	400	402	489	674	850
Foster	400	402	489	674	850
Grant	343	399	489	648	677
Hettinger	343	399	489	648	677
LaMoure	400	402	489	674	850
McHenry	374	411	511	719	784
McKenzie	343	399	489	648	677
Mercer	343	399	489	648	677
Nelson	381	473	565	764	849
Pembina	381	473	565	764	849

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	374	411	511	719	784
Ransom	400	402	489	674	850
Richland	333	401	507	659	781
Sargent	400	402	489	674	850
Sioux	343	399	489	648	677
Stark	348	422	489	711	860
Stutsman	407	408	489	677	859
Traill	381	473	565	764	849
Ward	320	398	489	675	801
Williams	318	388	489	644	683

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ramsey	363	373	491	612	774
Renville	374	411	511	719	784
Rolette	374	411	511	719	784
Sheridan	374	411	511	719	784
Slope	343	399	489	648	677
Steele	381	473	565	764	849
Towner	400	402	489	674	850
Walsh	381	473	565	764	849
Wells	400	402	489	674	850

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	482	564	722	918	947	Portage, Summit
Brown County, OH HMFA	393	412	544	702	846	Brown
Canton-Massillon, OH MSA	420	466	588	743	787	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	436	516	668	894	929	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	502	583	702	900	956	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	458	533	674	848	921	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	451	515	634	853	1018	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	365	432	519	640	661	Lawrence
Lima, OH MSA	429	435	538	663	681	Allen
Mansfield, OH MSA	354	431	544	706	734	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	379	405	519	689	744	Washington
Preble County, OH HMFA	467	482	585	758	785	Preble
Sandusky, OH MSA	389	468	598	780	821	Erie
Springfield, OH MSA	432	480	578	747	960	Clark
Toledo, OH MSA	438	487	603	778	848	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	592	593	712	852	879	Union
Weirton-Steubenville, WV-OH MSA	344	421	519	648	704	Jefferson
Wheeling, WV-OH MSA	337	406	519	652	761	Belmont
Youngstown-Warren-Boardman, OH HMFA	411	461	558	703	758	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	422	438	519	688	726
Ashtabula	409	481	613	779	908
Auglaize	384	413	541	703	722
Clinton	407	503	558	813	955
Coshocton	361	435	519	671	766
Darke	337	431	519	691	711
Fayette	422	485	592	713	951
Guernsey	365	450	519	686	705
Hardin	431	468	519	650	852
Henry	359	440	533	686	707

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	372	443	574	740	762
Athens	437	474	526	676	704
Champaign	367	448	565	697	749
Columbiana	419	442	534	661	803
Crawford	429	435	519	668	732
Defiance	396	454	551	695	846
Gallia	352	468	519	660	867
Hancock	393	460	596	811	861
Harrison	346	413	519	664	684
Highland	436	437	525	707	730

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OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	336	468	519	741	762
Huron	387	468	572	793	873
Knox	464	467	561	718	823
Marion	380	479	585	742	903
Mercer	339	440	519	699	720
Morgan	431	432	519	637	713
Noble	431	432	519	637	713
Perry	436	437	525	657	676
Putnam	368	408	537	666	695
Sandusky	467	478	562	699	763
Seneca	388	407	526	661	681
Tuscarawas	352	412	543	687	708
Vinton	378	468	519	711	884
Williams	436	442	548	726	802

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Holmes	431	432	519	685	726
Jackson	445	447	535	641	661
Logan	478	484	575	723	747
Meigs	431	468	519	711	732
Monroe	431	432	519	637	713
Muskingum	420	431	519	665	838
Paulding	381	417	519	677	698
Pike	342	440	526	630	655
Ross	395	447	522	645	741
Scioto	415	434	519	681	815
Shelby	438	448	582	726	804
Van Wert	337	404	519	632	652
Wayne	392	487	600	717	784
Wyandot	431	432	519	712	733

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	349	396	493	657	715	Sequoyah
Grady County, OK HMFA	338	377	469	635	729	Grady
Lawton, OK MSA	380	410	516	754	907	Comanche
Le Flore County, OK HMFA	317	370	469	580	711	Le Flore
Lincoln County, OK HMFA	388	389	469	618	637	Lincoln
Oklahoma City, OK HMFA	443	483	587	792	849	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	317	356	469	636	676	Okmulgee
Pawnee County, OK HMFA	396	408	474	614	632	Pawnee
Tulsa, OK HMFA	474	515	629	831	858	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	391	393	469	560	576
Atoka	340	380	469	610	711
Beckham	390	422	469	613	823
Bryan	381	382	469	606	722
Carter	415	442	500	622	666
Choctaw	388	420	469	665	685
Coal	340	380	469	610	711
Craig	317	370	487	583	856
Delaware	337	379	469	630	650
Ellis	391	404	469	637	657
Garvin	303	355	469	616	751
Greer	363	377	469	630	660
Harper	391	404	469	637	657
Hughes	379	432	515	656	675
Jefferson	356	385	486	703	823

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	391	404	469	637	657
Beaver	391	404	469	637	657
Blaine	391	404	469	637	657
Caddo	323	357	469	561	702
Cherokee	379	408	472	593	682
Cimarron	391	404	469	637	657
Cotton	356	385	486	703	823
Custer	362	363	469	671	691
Dewey	391	404	469	637	657
Garfield	386	407	489	677	697
Grant	391	404	469	637	657
Harmon	363	377	469	630	660
Haskell	305	366	469	590	647
Jackson	322	419	470	659	680
Johnston	340	380	469	610	711

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	318	394	489	675	698
Kiowa	363	377	469	630	660
Love	340	380	469	610	711
McIntosh	347	393	470	588	667
Marshall	340	380	469	610	711
Murray	391	392	469	630	807
Noble	344	400	481	669	689
Okfuskee	379	432	515	656	675
Payne	418	479	587	831	856
Pontotoc	330	368	469	639	659
Pushmataha	305	366	469	590	647
Seminole	304	376	469	563	580
Texas	365	436	492	622	744
Washington	387	388	473	662	729
Woods	348	372	469	682	703

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kingfisher	391	404	469	659	678
Latimer	305	366	469	590	647
McCurtain	304	355	469	609	628
Major	391	404	469	637	657
Mayes	304	423	469	587	671
Muskogee	355	418	496	627	693
Nowata	357	378	469	625	706
Ottawa	392	393	469	639	659
Pittsburg	320	373	492	619	755
Pottawatomie	409	465	517	655	760
Roger Mills	363	377	469	630	660
Stephens	307	356	469	641	661
Tillman	356	385	486	703	823
Washita	363	377	469	630	660
Woodward	325	380	469	585	603

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	505	587	700	1020	1051	Deschutes
Corvallis, OR MSA	477	579	721	1048	1205	Benton
Eugene-Springfield, OR MSA	478	581	735	1028	1144	Lane
Medford, OR MSA	471	560	703	1023	1053	Jackson
Portland-Vancouver-Beaverton, OR-WA MSA	550	638	737	1073	1289	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	477	530	634	921	1111	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	369	430	567	825	849
Coos	402	488	618	820	944
Curry	455	523	617	901	1088
Gilliam	426	499	603	817	956
Harney	382	444	559	773	822
Jefferson	476	507	574	835	940
Klamath	380	446	568	795	883
Lincoln	476	543	693	960	1085
Malheur	404	461	561	811	835
Sherman	426	499	603	817	956
Umatilla	398	454	580	814	908
Wallowa	377	439	579	829	891
Wheeler	426	499	603	817	956

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clatsop	419	521	644	932	961
Crook	398	512	612	828	969
Douglas	393	468	604	819	1014
Grant	426	499	603	817	956
Hood River	430	532	662	942	972
Josephine	461	528	639	909	1008
Lake	382	444	559	773	822
Linn	454	550	686	946	1171
Morrow	426	499	603	817	956
Tillamook	439	524	674	942	971
Union	380	442	583	851	875
Wasco	440	492	613	871	1078

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	549	668	791	1024	1083	Carbon, Lehigh, Northampton
Altoona, PA MSA	411	450	544	713	735	Blair
Armstrong County, PA HMFA	438	476	526	673	883	Armstrong
Erie, PA MSA	407	460	594	710	808	Erie
Harrisburg-Carlisle, PA MSA	506	578	728	919	952	Cumberland, Dauphin, Perry
Johnstown, PA MSA	413	420	516	650	744	Cambria
Lancaster, PA MSA	482	572	704	893	938	Lancaster
Lebanon, PA MSA	395	472	608	825	851	Lebanon
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	676	773	923	1105	1314	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	747	777	900	1219	1492	Pike
Pittsburgh, PA HMFA	570	625	748	930	1004	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	489	546	673	900	928	Berks
Scranton--Wilkes-Barre, PA MSA	436	520	624	791	836	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	441	461	562	688	756	Mercer
State College, PA MSA	565	630	742	887	914	Centre
Williamsport, PA MSA	400	459	553	726	747	Lycoming
York-Hanover, PA MSA	460	529	671	811	840	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	485	530	634	853	947	Bedford	393	446	516	617	819
Bradford	336	450	516	646	791	Cameron	431	447	517	686	737
Clarion	429	466	516	658	688	Clearfield	393	434	516	740	873
Clinton	465	466	562	673	691	Columbia	452	496	604	773	916
Crawford	411	456	516	685	782	Elk	430	449	516	669	809
Forest	430	457	516	669	688	Franklin	401	455	575	757	927
Fulton	344	439	516	636	744	Greene	428	456	516	617	635
Huntingdon	335	415	516	667	686	Indiana	459	477	552	659	721
Jefferson	351	434	516	683	704	Juniata	397	430	518	704	726
Lawrence	374	489	575	688	807	McKean	432	455	519	695	748
Mifflin	363	421	516	670	839	Monroe	530	653	816	1042	1166
Montour	462	530	610	730	753	Northumberland	354	462	516	639	662
Potter	429	465	516	684	703	Schuylkill	344	448	516	644	708
Snyder	360	472	555	694	749	Somerset	429	429	516	634	671
Sullivan	340	456	523	655	780	Susquehanna	418	455	533	641	706
Tioga	442	485	540	710	758	Union	495	516	596	783	843
Venango	396	433	516	652	739	Warren	335	431	516	670	709
Wayne	502	505	634	792	893						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	654	798	987	1340	1732	Newport County towns of Middletown town, Newport city, Portsmouth town
*Providence-Fall River, RI-MA HMFA	795	869	1014	1214	1546	Bristol County towns of Barrington town, Bristol town, Warren town

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RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	543	683	799	955	1246	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	374	486	552	699	719	Anderson
Augusta-Richmond County, GA-SC MSA.....	480	521	585	783	824	Aiken, Edgefield
Charleston-North Charleston, SC MSA.....	551	610	690	899	1047	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Concord, NC-SC HMFA.....	588	637	707	891	1036	York
Columbia, SC HMFA.....	541	589	657	811	837	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	325	416	500	601	647	Darlington
Florence, SC HMFA.....	387	435	504	605	759	Florence
Greenville, SC HMFA.....	516	560	623	822	845	Greenville, Pickens
Kershaw County, SC HMFA.....	336	423	520	654	759	Kershaw
Laurens County, SC HMFA.....	442	480	532	672	785	Laurens
Myrtle Beach-Conway-North Myrtle Beach, SC MSA....	555	609	712	851	1031	Horry
Spartanburg, SC MSA.....	480	496	580	730	751	Spartanburg
Sumter, SC MSA.....	430	468	518	666	704	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	324	450	500	607	625	Allendale.....	416	450	500	621	803
Bamberg.....	415	417	500	667	687	Barnwell.....	414	436	500	602	779
Beaufort.....	590	710	803	979	1040	Cherokee.....	409	410	500	599	635
Chester.....	429	430	516	617	655	Chesterfield.....	354	441	500	598	878
Clarendon.....	435	436	524	628	715	Colleton.....	325	405	500	707	726
Dillon.....	415	423	500	625	687	Georgetown.....	490	491	592	767	926
Greenwood.....	439	459	528	766	790	Hampton.....	416	423	500	617	700
Jasper.....	460	499	556	663	752	Lancaster.....	339	427	500	688	757
Lee.....	342	419	500	615	770	McCormick.....	420	441	506	700	723
Marion.....	413	414	500	607	624	Marlboro.....	415	416	500	631	748
Newberry.....	414	450	500	636	783	Oconee.....	328	384	504	625	887
Orangeburg.....	416	450	500	621	770	Union.....	416	417	500	691	776

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	435	436	524	628	715

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	331	395	511	743	829	Meade
Rapid City, SD HMFA	468	545	687	910	935	Pennington
Sioux City, IA-NE-SD MSA	399	469	615	774	797	Union
Sioux Falls, SD MSA	477	501	640	836	925	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	326	379	499	639	683	Beadle	415	416	499	726	823
Bennett	376	391	499	668	743	Bon Homme	326	379	499	639	683
Brookings	325	408	502	708	882	Brown	365	392	516	655	778
Brule	326	379	499	639	683	Buffalo	326	379	499	639	683
Butte	376	391	499	668	743	Campbell	363	380	499	659	783
Charles Mix	326	379	499	639	683	Clark	334	388	499	675	796
Clay	381	406	533	735	935	Codington	372	435	572	739	844
Corson	376	391	499	668	743	Custer	376	391	499	668	743
Davison	346	406	533	684	735	Day	363	380	499	659	783
Deuel	334	388	499	675	796	Dewey	376	391	499	668	743
Douglas	326	379	499	639	683	Edmunds	363	380	499	659	783
Fall River	370	386	507	658	732	Faulk	363	380	499	659	783
Grant	334	388	499	675	796	Gregory	326	379	499	639	683
Haakon	376	391	499	668	743	Hamlin	334	388	499	675	796
Hand	363	380	499	659	783	Hanson	326	379	499	639	683
Harding	376	391	499	668	743	Hughes	333	417	515	646	666
Hutchinson	326	379	499	639	683	Hyde	326	379	499	639	683
Jackson	376	391	499	668	743	Jerauld	363	380	499	659	783
Jones	376	391	499	668	743	Kingsbury	334	388	499	675	796
Lake	334	388	499	675	796	Lawrence	353	428	527	734	784
Lyman	326	379	499	639	683	McPherson	363	380	499	659	783
Marshall	363	380	499	659	783	Mellette	376	391	499	668	743
Miner	334	388	499	675	796	Moody	334	388	499	675	796
Perkins	376	391	499	668	743	Potter	376	391	499	668	743
Roberts	363	380	499	659	783	Sanborn	326	379	499	639	683
Shannon	376	391	499	668	743	Spink	363	380	499	659	783
Stanley	326	379	499	639	683	Sully	326	379	499	639	683
Todd	376	391	499	668	743	Tripp	326	379	499	639	683
Walworth	363	380	499	659	783	Yankton	354	420	545	714	734
Ziebach	376	391	499	668	743						

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TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	488	516	608	748	880	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	485	505	586	847	872	Montgomery
Cleveland, TN MSA	417	426	549	689	876	Bradley, Polk
Hickman County, TN HMFA	320	445	493	719	741	Hickman
Jackson, TN MSA	448	489	617	826	848	Chester, Madison
Johnson City, TN MSA	348	420	521	647	807	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	376	404	502	673	804	Hawkins, Sullivan
Knoxville, TN MSA	427	491	592	793	819	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	311	379	479	570	634	Macon
Memphis, TN-MS-AR HMFA	548	596	662	882	910	Fayette, Shelby, Tipton
Morristown, TN MSA	408	410	492	645	727	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro, TN HMFA	528	603	693	899	925	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	411	412	493	658	679	Smith
Stewart County, TN HMFA	314	409	483	659	679	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	389	477	599	750	772	Benton	378	379	479	592	650
Bledsoe	313	393	479	629	648	Campbell	398	399	479	617	734
Carroll	397	398	479	591	660	Claiborne	311	397	479	641	719
Clay	388	388	479	622	640	Cocke	312	386	479	574	782
Coffee	427	428	514	697	761	Crockett	398	432	479	625	645
Cumberland	397	398	479	679	840	Decatur	358	394	479	616	701
DeKalb	398	399	479	691	714	Dyer	323	379	497	663	724
Fentress	388	388	479	622	640	Franklin	329	395	508	739	890
Gibson	392	401	479	602	665	Giles	337	396	522	628	646
Greene	311	392	479	649	667	Grundy	313	393	479	629	648
Hancock	397	398	479	613	738	Hardeman	346	429	479	649	841
Hardin	351	391	479	635	654	Haywood	401	416	544	650	714
Henderson	335	444	518	617	637	Henry	313	366	482	576	702
Houston	378	379	479	592	650	Humphreys	398	431	479	683	705
Jackson	388	388	479	622	640	Johnson	310	386	479	642	673
Lake	356	398	479	622	659	Lauderdale	421	422	508	617	638
Lawrence	330	370	479	593	676	Lewis	320	373	481	613	631
Lincoln	397	398	479	585	603	McMinn	422	423	509	609	811
McNairy	311	366	479	692	712	Marshall	387	411	539	648	813
Maury	413	516	636	810	834	Meigs	313	393	479	629	648
Monroe	378	379	481	575	734	Moore	419	420	502	663	684
Morgan	395	396	479	599	698	Obion	329	397	479	632	666
Overton	312	393	479	585	602	Perry	320	373	481	613	631
Pickett	388	388	479	622	640	Putnam	398	399	497	715	767
Rhea	310	383	479	636	654	Roane	419	432	502	671	689
Scott	398	405	479	634	844	Sevier	480	520	586	705	1030
Van Buren	388	388	479	622	640	Warren	387	392	504	675	803

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TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	320	373	481	613	631
White	359	365	479	677	696
Weakley	348	428	479	701	844

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	414	435	549	715	904	Callahan, Jones, Taylor
Amarillo, TX MSA	425	461	575	792	888	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	377	468	557	812	837	Aransas
Atascosa County, TX HMFA	328	382	504	637	655	Atascosa
Austin County, TX HMFA	491	492	592	786	810	Austin
*Austin-Round Rock, TX MSA	601	685	836	1137	1315	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	442	496	593	735	762	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	518	577	663	914	982	Brazoria
Brownsville-Harlingen, TX MSA	388	448	513	634	717	Cameron
Calhoun County, TX HMFA	358	424	544	685	918	Calhoun
College Station-Bryan, TX MSA	517	585	714	905	932	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	545	560	695	954	1040	Nueces, San Patricio
*Dallas, TX HMFA	591	658	798	1059	1283	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	460	492	587	842	998	El Paso
*Fort Worth-Arlington, TX HMFA	565	605	745	1010	1135	Johnson, Parker, Tarrant
*Houston-Baytown-Sugar Land, TX HMFA	569	633	768	1024	1287	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	683	684	823	1198	1445	Kendall
Killeen-Temple-Fort Hood, TX HMFA	447	494	628	914	1101	Bell, Coryell
Lampasas County, TX HMFA	328	417	504	735	861	Lampasas
Laredo, TX MSA	437	479	573	749	981	Webb
Longview, TX HMFA	462	485	557	763	784	Gregg, Upshur
Lubbock, TX MSA	402	489	618	875	903	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	490	538	635	761	875	Hidalgo
Medina County, TX HMFA	443	492	579	692	842	Medina
Midland, TX MSA	392	424	558	813	963	Midland
Odessa, TX MSA	364	386	506	729	847	Ector
Rusk County, TX HMFA	430	431	517	619	637	Rusk
San Angelo, TX MSA	394	454	578	827	903	Irion, Tom Green
San Antonio, TX HMFA	521	579	715	922	1120	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	509	536	630	828	958	Grayson
Texarkana, TX-Texarkana, AR MSA	439	443	546	666	725	Bowie
Tyler, TX MSA	464	545	614	841	919	Smith
Victoria, TX HMFA	416	479	613	763	904	Goliad, Victoria
Waco, TX MSA	505	506	629	788	813	McLennan
Wichita Falls, TX MSA	455	478	569	799	822	Archer, Clay, Wichita
Wise County, TX HMFA	453	454	546	667	741	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	450	471	543	715	937
Angelina	429	489	547	708	730
Baylor	342	405	504	642	762
Andrews	418	429	504	675	753
Bailey	389	433	504	656	831
Bee	419	420	504	677	758

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	400	430	544	714	818
Bosque	418	419	504	612	734
Briscoe	410	413	504	671	692
Brown	400	435	548	697	800
Camp	421	422	519	708	731
Castro	410	413	504	671	692
Childress	410	413	504	671	692
Coke	393	452	575	827	902
Collingsworth	410	413	504	671	692
Comanche	407	437	517	658	718
Cooke	463	464	585	722	744
Crane	418	443	504	654	777
Culberson	418	443	504	654	777
Dawson	416	417	504	650	671
DeWitt	373	387	504	658	712
Dimmit	413	415	504	686	813
Duval	348	437	504	671	715
Edwards	413	415	504	686	813
Falls	331	452	509	649	674
Fayette	416	472	571	709	730
Floyd	389	433	504	656	831
Franklin	376	432	522	639	769
Frio	403	495	602	762	907
Garza	389	433	504	656	831
Glasscock	416	417	504	650	671
Gray	390	391	504	633	653
Hale	339	428	504	617	689
Hamilton	400	430	544	714	818
Hardeman	342	405	504	642	762
Hartley	410	413	504	671	692
Hemphill	410	413	504	671	692
Hill	328	455	504	714	779
Hood	468	508	565	746	991
Houston	484	520	583	698	756
Hudspeth	418	443	504	654	777
Jack	342	405	504	642	762
Jasper	419	420	504	623	721
Jim Hogg	418	450	504	720	802
Karnes	373	385	504	660	714
Kent	389	390	504	721	783
Kimble	416	417	504	650	671
Kinney	413	415	504	686	813

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	416	417	504	650	671
Brewster	367	383	504	603	653
Brooks	418	450	504	720	802
Burnet	408	477	627	789	811
Cass	329	454	504	692	815
Cherokee	410	449	504	674	701
Cochran	389	433	504	656	831
Coleman	400	430	544	714	818
Colorado	403	445	504	666	684
Concho	416	417	504	650	671
Cottle	342	405	504	642	762
Crockett	416	417	504	650	671
Dallam	376	412	544	650	667
Deaf Smith	328	418	504	732	834
Dickens	389	433	504	656	831
Donley	410	413	504	671	692
Eastland	407	437	517	658	718
Erath	406	440	549	670	690
Fannin	436	440	524	653	673
Fisher	389	390	504	721	783
Foard	342	405	504	642	762
Freestone	331	452	509	665	686
Gaines	418	446	504	654	783
Gillespie	425	497	653	904	931
Gonzales	345	394	504	733	754
Grimes	447	490	546	711	732
Hall	410	413	504	671	692
Hansford	410	413	504	671	692
Harrison	404	407	536	693	713
Haskell	389	390	504	721	783
Henderson	430	445	585	767	791
Hockley	393	417	504	700	721
Hopkins	374	432	527	668	925
Howard	418	421	504	708	727
Hutchinson	420	421	505	604	751
Jackson	328	424	504	614	887
Jeff Davis	418	443	504	654	777
Jim Wells	337	453	504	670	691
Kenedy	418	450	504	720	802
Kerr	506	548	616	795	819
King	389	433	504	656	831
Kleberg	430	460	517	755	910

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	342	405	504	642	762
Lamb	389	433	504	656	831
Lavaca	403	445	504	666	684
Leon	447	490	546	711	732
Lipscomb	410	413	504	671	692
Llano	519	523	688	823	848
Lynn	389	433	504	656	831
McMullen	348	437	504	671	715
Marion	421	422	519	708	731
Mason	416	417	504	650	671
Maverick	420	421	504	732	755
Milam	328	405	504	652	693
Mitchell	389	390	504	721	783
Moore	356	437	504	734	755
Motley	389	433	504	656	831
Navarro	470	479	578	702	725
Nolan	391	392	504	650	883
Oldham	410	413	504	671	692
Panola	419	454	504	613	885
Pecos	416	454	504	611	740
Presidio	418	443	504	654	777
Reagan	416	417	504	650	671
Red River	376	432	522	639	769
Refugio	348	437	504	671	715
Runnels	416	417	504	650	671
San Augustine	417	418	504	655	883
Schleicher	416	417	504	650	671
Shackelford	389	390	504	721	783
Sherman	410	413	504	671	692
Starr	418	456	504	735	888
Sterling	416	417	504	650	671
Sutton	416	417	504	650	671
Terrell	418	443	504	654	777
Throckmorton	389	390	504	721	783
Trinity	484	520	583	698	756
Upton	416	417	504	650	671
Val Verde	358	429	506	629	733
Walker	498	533	644	829	1073
Washington	474	539	597	838	864
Wheeler	410	413	504	671	692
Willacy	418	454	504	733	816
Wood	379	382	504	734	884

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	377	437	548	690	772
La Salle	413	415	504	686	813
Lee	403	459	509	696	718
Limestone	328	456	504	645	668
Live Oak	348	437	504	671	715
Loving	418	443	504	654	777
McCulloch	418	420	504	734	757
Madison	447	490	546	711	732
Martin	416	417	504	650	671
Matagorda	328	431	504	734	886
Menard	416	417	504	650	671
Mills	400	430	544	714	818
Montague	381	487	543	685	952
Morris	376	432	522	639	769
Nacogdoches	406	509	600	716	982
Newton	417	418	504	655	883
Ochiltree	410	413	504	704	725
Palo Pinto	424	425	527	728	748
Parmer	410	413	504	671	692
Polk	419	424	504	603	621
Rains	421	422	525	708	729
Real	413	415	504	686	813
Reeves	418	446	504	646	783
Roberts	410	413	504	671	692
Sabine	417	418	504	655	883
San Saba	400	430	544	714	818
Scurry	333	394	504	733	805
Shelby	418	420	504	724	883
Somervell	407	437	517	660	718
Stephens	375	383	504	694	754
Stonewall	389	390	504	721	783
Swisher	410	413	504	671	692
Terry	388	432	504	662	829
Titus	392	465	552	664	969
Tyler	418	419	504	649	841
Uvalde	329	448	504	657	884
Van Zandt	444	447	546	763	786
Ward	419	424	504	628	745
Wharton	404	454	504	667	687
Wilbarger	327	390	504	647	722
Winkler	418	443	504	654	777
Yoakum	389	433	504	656	831

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	329	383	504	640	744
Zavala	413	415	504	686	813
Zapata	418	450	504	720	802

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	456	492	615	825	1018	Cache
Ogden-Clearfield, UT MSA	431	519	639	879	1039	Davis, Morgan, Weber
Provo-Orem, UT MSA	525	578	675	982	1183	Juab, Utah
Salt Lake City, UT HMFA	545	592	714	1005	1170	Salt Lake
St. George, UT MSA	522	547	650	945	1063	Washington
Summit County, UT HMFA	660	916	1018	1425	1786	Summit
Tooele County, UT HMFA	490	548	652	824	1142	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	499	501	612	867	922
Carbon	444	445	535	703	825
Duchesne	461	501	555	717	975
Garfield	499	501	612	867	922
Iron	457	482	555	809	975
Millard	499	501	612	867	922
Rich	465	494	618	831	1008
Sanpete	499	501	612	867	922
Uintah	431	468	519	681	767
Wayne	499	501	612	867	922
Box Elder	388	475	598	791	920
Daggett	461	501	555	720	975
Emery	461	501	555	720	975
Grand	462	503	558	719	979
Kane	499	501	612	867	921
Piute	499	501	612	867	922
San Juan	461	501	555	720	975
Sevier	499	501	612	867	922
Wasatch	517	604	796	951	1142

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	708	783	983	1258	1411	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	496	621	747	982	1310	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	495	620	722	941	1105	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	469	487	611	774	801	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	482	542	658	839	984	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	489	588	684	953	1201	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	521	588	685	954	983	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	351	485	542	685	861	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	447	585	680	899	1151	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	491	574	719	971	1087	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	582	607	797	963	993	Athens town, Brattleboro town, Brookline town, Dover town,

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	548	614	722	983	1169	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	488	534	598	820	1051	Montgomery, Radford city
Charlottesville, VA MSA	557	669	792	1026	1136	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	353	405	523	652	700	Pittsylvania, Danville city
Franklin County, VA HMFA	326	390	502	600	640	Franklin
Giles County, VA HMFA	327	424	502	640	883	Giles
Harrisonburg, VA MSA	451	501	610	855	878	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	376	404	502	673	804	Scott, Washington, Bristol city
Louisa County, VA HMFA	462	524	597	714	735	Louisa
Lynchburg, VA MSA	450	461	556	686	765	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	381	403	502	719	773	Pulaski
*Richmond, VA HMFA	651	705	788	1051	1255	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	446	474	613	778	849	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	700	735	844	1164	1458	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	473	550	685	963	993	Warren
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	995	1134	1286	1659	2171	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	491	510	673	929	956	Frederick, Winchester city

SCHEDULE B - FY 2007 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	343	469	528	642	790
Augusta	438	451	588	841	967
Bland	418	433	502	640	711
Buchanan	418	433	502	640	711
Carroll	417	453	502	602	669
Culpeper	631	642	760	983	1044
Essex	404	499	614	836	861
Grayson	418	433	502	640	711
Halifax	326	453	502	674	882
Highland	429	446	554	765	923
Lancaster	403	496	604	743	800
Lunenburg	431	445	519	647	896
Mecklenburg	329	410	506	621	828
Northampton	403	496	604	736	800
Nottoway	418	451	502	713	816
Page	340	397	521	672	692
Prince Edward	487	488	587	703	940
Richmond	403	496	604	736	800
Russell	327	434	502	614	634
Smyth	415	451	502	638	825
Tazewell	418	419	502	645	729
Wise	418	426	502	653	823
Buena Vista city	401	451	502	731	881
Covington city	326	418	502	610	636
Franklin city	363	502	557	689	980
Lexington city	401	451	502	731	881
Norton city	418	426	502	653	823
Waynesboro city	438	451	588	841	967

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	326	418	502	610	636
Bath	429	446	554	765	923
Brunswick	431	445	519	647	896
Buckingham	418	451	502	645	816
Charlotte	418	451	502	645	816
Dickenson	418	448	502	655	674
Floyd	461	502	556	773	979
Greensville	432	469	520	628	780
Henry	387	403	502	644	737
King George	636	637	766	1114	1147
Lee	325	393	502	645	683
Madison	443	494	597	826	853
Middlesex	403	496	604	736	800
Northumberland	403	496	604	736	800
Orange	403	554	617	898	1083
Patrick	416	453	502	622	641
Rappahannock	443	494	597	826	853
Rockbridge	401	451	502	731	881
Shenandoah	414	443	542	723	801
Southampton	363	502	557	689	980
Westmoreland	408	497	627	860	886
Wythe	326	413	502	658	883
Clifton Forge city	326	418	502	610	636
Emporia city	432	469	520	628	780
Galax city	417	453	502	602	669
Martinsville city	387	403	502	644	737
Staunton city	438	451	588	841	967

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	535	591	741	1081	1218	Whatcom
Bremerton-Silverdale, WA MSA	566	635	782	1119	1222	Kitsap
Kennewick-Richland-Pasco, WA MSA	473	516	647	875	1036	Benton, Franklin
Lewiston, ID-WA MSA	438	455	570	809	986	Asotin
Longview, WA MSA	417	524	609	887	1012	Cowlitz
Mount Vernon-Anacortes, WA MSA	534	661	820	1122	1400	Skagit
Olympia, WA MSA	532	597	763	1108	1340	Thurston
Portland-Vancouver-Beaverton, OR-WA MSA	550	638	737	1073	1289	Clark, Skamania
Seattle-Bellevue, WA HMFA	623	710	854	1207	1474	King, Snohomish
Spokane, WA MSA	425	498	656	901	1021	Spokane
*Tacoma, WA HMFA	541	632	788	1148	1292	Pierce
Wenatchee, WA MSA	486	514	650	877	1009	Chelan, Douglas

WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	451	529	684	901	950	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	379	452	579	777	801	Clallam	477	528	687	1004	1035
Columbia	390	456	601	812	969	Ferry	379	448	579	777	801
Garfield	390	456	601	812	969	Grant	385	458	593	801	822
Grays Harbor	391	459	603	849	873	Island	681	682	823	1197	1445
Jefferson	489	600	733	1066	1097	Kittitas	437	509	671	899	933
Klickitat	505	513	609	855	881	Lewis	422	540	649	867	907
Lincoln	379	448	579	777	801	Mason	475	559	670	915	1084
Okanogan	420	506	595	814	896	Pacific	415	447	586	831	864
Pend Oreille	379	448	579	777	801	San Juan	598	643	795	1142	1395
Stevens	375	452	577	790	863	Wahkiakum	420	522	610	888	1019
Walla Walla	390	456	601	864	891	Whitman	422	465	603	851	1043

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	311	403	477	590	654	Boone
Charleston, WV HMFA	412	450	562	716	737	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	365	442	519	700	817	Mineral
Huntington-Ashland, WV-KY-OH MSA	365	432	519	640	661	Cabell, Wayne
Jefferson County, WV HMFA	423	571	650	949	1143	Jefferson
Martinsburg, WV HMFA	483	545	655	876	1051	Berkeley, Morgan
Morgantown, WV MSA	433	450	533	691	820	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	379	405	519	689	744	Pleasants, Wirt, Wood
Weirton-Steubenville, WV-OH MSA	344	421	519	648	704	Brooke, Hancock
Wheeling, WV-OH MSA	337	406	519	652	761	Marshall, Ohio
Winchester, VA-WV MSA	491	510	673	929	956	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	367	383	477	625	658	Braxton	367	383	477	625	658
Calhoun	349	416	505	656	754	Doddridge	331	421	497	598	708
Fayette	397	398	477	590	634	Gilmer	367	383	477	625	658
Grant	419	483	543	711	882	Greenbrier	379	431	477	573	754
Hardy	419	483	543	711	882	Harrison	411	412	494	619	692
Jackson	349	416	505	656	754	Lewis	376	407	477	598	615
Logan	333	404	477	586	602	McDowell	398	412	477	651	827
Marion	341	436	524	627	763	Mason	396	404	477	604	645
Mercer	396	411	477	645	817	Mingo	311	418	477	601	780
Monroe	396	430	477	594	615	Nicholas	396	430	477	607	664
Pendleton	419	483	545	711	882	Pocahontas	396	412	477	584	693
Raleigh	403	428	483	617	635	Randolph	377	378	487	628	646

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WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	349	416	505	656	754	Roane	349	416	505	656	754
Summers	396	430	477	594	615	Taylor	331	421	497	595	708
Tucker	367	383	477	625	658	Tyler	349	416	505	656	754
Upshur	310	387	477	641	661	Webster	396	412	477	584	693
Wetzel	311	425	477	607	691	Wyoming	398	412	477	651	827

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	474	487	604	871	896	Calumet, Outagamie
Columbia County, WI HMFA	416	486	640	864	892	Columbia
Duluth, MN-WI MSA	361	440	555	697	888	Douglas
Eau Claire, WI MSA	374	446	558	756	787	Chippewa, Eau Claire
Fond du Lac, WI MSA	453	485	584	767	832	Fond du Lac
Green Bay, WI HMFA	472	483	608	855	881	Brown, Kewaunee
Iowa County, WI HMFA	400	467	615	735	756	Iowa
Janesville, WI MSA	444	519	646	846	870	Rock
Kenosha County, WI HMFA	594	618	767	1055	1213	Kenosha
La Crosse, WI-MN MSA	370	433	570	756	929	La Crosse
Madison, WI HMFA	525	656	775	1040	1288	Dane
*Milwaukee-Waukesha-West Allis, WI MSA	510	608	726	915	942	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	600	707	858	1123	1262	Pierce, St. Croix
Oconto County, WI HMFA	386	468	519	672	700	Oconto
Oshkosh-Neenah, WI MSA	419	493	583	765	991	Winnebago
Racine, WI MSA	474	554	695	865	949	Racine
Sheboygan, WI MSA	377	484	572	707	868	Sheboygan
Wausau, WI MSA	374	466	575	768	849	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	399	438	541	704	726	Ashland	401	403	519	660	893
Barron	345	435	519	662	681	Bayfield	354	414	519	664	689
Buffalo	369	419	535	678	708	Burnett	354	414	519	664	689
Clark	335	397	519	709	731	Crawford	431	461	519	644	794
Dodge	527	529	637	806	871	Door	389	498	599	804	902
Dunn	403	434	545	795	816	Florence	347	419	519	660	693
Forest	399	438	541	704	726	Grant	431	432	519	672	911
Green	388	418	549	697	814	Green Lake	395	453	525	687	838
Iron	354	414	519	664	689	Jackson	369	419	535	678	708
Jefferson	454	532	701	840	1059	Juneau	350	431	537	707	729
Lafayette	385	406	522	668	749	Langlade	431	432	519	685	746
Lincoln	432	433	519	756	779	Manitowoc	352	413	543	649	808
Marinette	432	467	519	680	701	Marquette	408	457	556	716	795
Menominee	408	457	556	716	795	Monroe	363	424	559	709	775
Oneida	395	432	567	725	998	Pepin	369	419	535	678	708

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	402	470	618	760	784
Price	354	414	519	664	689
Rusk	354	414	519	664	689
Sawyer	354	417	519	664	689
Taylor	354	414	519	664	689
Vernon	412	414	519	656	715
Walworth	467	550	717	895	923
Waupaca	358	449	546	713	734
Wood	351	431	534	650	712
Portage	462	468	559	740	761
Richland	365	407	519	665	687
Sauk	400	532	610	820	846
Shawano	357	421	519	648	744
Trempealeau	408	409	519	709	730
Vilas	399	438	541	737	759
Washburn	354	414	519	664	689
Waushara	408	457	556	716	795

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	370	405	512	745	898	Natrona
Cheyenne, WY MSA	473	499	633	862	1110	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	409	469	595	817	865
Campbell	456	491	550	745	811
Converse	333	412	512	698	900
Fremont	401	403	512	642	818
Hot Springs	410	428	512	668	800
Lincoln	448	475	540	721	853
Park	380	437	514	646	851
Sheridan	408	440	541	692	845
Sweetwater	336	408	512	716	743
Uinta	356	450	512	699	830
Weston	410	428	512	668	800
Big Horn	410	428	512	668	800
Carbon	333	398	512	642	780
Crook	410	428	512	668	800
Goshen	424	425	512	631	869
Johnson	407	423	522	663	792
Niobrara	410	428	512	668	800
Platte	410	428	512	668	800
Sublette	451	475	551	721	854
Teton	697	778	978	1289	1327
Washakie	410	428	512	668	800

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	709	761	929	1354	1618

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	312	339	376	483	541	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	328	356	396	540	633	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	324	349	389	495	569	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	361	391	435	603	726	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

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PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	375	408	453	659	794	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	329	355	395	561	695	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	345	374	416	497	686	Hormigueros, Mayagüez
Ponce, PR MSA	383	415	460	639	729	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	315	327	379	496	534	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	419	455	506	670	792	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	305	322	366	461	587	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	304	328	366	501	544	Coamo	304	328	366	501	544
Culebra	304	328	366	501	544	Jayuya	304	328	366	501	544
Las Marías	304	328	366	501	544	Maricao	304	328	366	501	544
Salinas	304	328	366	501	544	Santa Isabel	304	328	366	501	544
Utuado	304	328	366	501	544	Vieques	304	328	366	501	544

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Criox	494	515	624	779	892	St. John	562	671	864	1070	1119
St. Thomas	562	671	864	1070	1119						

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name. 08/30/2006

SCHEDULE D - FY 2007 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	*Orange County, CA HMFA	$660
	*Riverside-San Bernardino-Ontario, CA MSA	$427
	*San Diego-Carlsbad-San Marcos, CA MSA	$683
	Los Angeles-Long Beach, CA HMFA	$543
	Napa, CA MSA	$485
	Santa Rosa-Petaluma, CA MSA	$603
	Vallejo-Fairfield, CA MSA	$485
Colorado	Boulder, CO MSA	$422
Maryland	St. Mary's	$413
New York	Utica-Rome, NY MSA	$260
Oregon	Bend, OR MSA	$303
	Salem, OR MSA	$408
Pennsylvania	Adams	$465
Washington	Olympia, WA MSA	$474
West Virginia	Logan	$374
	McDowell	$374
	Mercer	$374
	Mingo	$374
	Wyoming	$374

* 50th percentile FMR areas.

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Federal Register

Wednesday,
September 27, 2006

Part VI

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Default Investment Alternatives Under Participant Directed Individual Account Plans; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB10

Default Investment Alternatives Under Participant Directed Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would implement recent amendments to title I of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of the Pension Protection Act of 2006, Public Law 109–280, under which a participant of a participant directed individual account pension plan will be deemed to have exercised control over assets in his or her account if, in the absence of investment directions from the participant, the plan invests in a qualified default investment alternative. A fiduciary of a plan that complies with this proposed regulation will not be liable for any loss, or by reason of any breach that occurs as a result of such investments. The types of investments that qualify as default investment alternatives under section 404(c)(5) of ERISA are described in the proposal. Plan fiduciaries remain responsible for the prudent selection and monitoring of the qualified default investment alternative. The proposed regulation conditions relief upon advance notice to participants and beneficiaries describing the plan's provisions governing the circumstances under which contributions or other assets will be invested on their behalf in a qualified default investment alternative, the investment objectives of the default investment alternative, and the right of participants and beneficiaries to direct investments out of the default investment alternative without penalty. The regulation, upon adoption, will affect plan sponsors and fiduciaries of participant directed individual account plans, the participants and beneficiaries in such plans, and the service providers to such plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before November 13, 2006.

ADDRESSES: Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: Default Investment Regulation. Commenters are encouraged to submit comments electronically to *e-ORI@dol.gov* or *www.regulations.gov* (follow instructions for submission). Comments will be available to the public at *www.dol.gov/ebsa* and *www.regulations.gov*. Comments also will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Erin M. Sweeney or Lisa M. Alexander, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

It is well established that many of America's workers are not adequately saving for retirement. Part of the retirement savings problem is attributable to employees who, for a wide variety of reasons, do not take advantage of the opportunity to participate in their employer's defined contribution pension plan (such as a 401(k) plan). The retirement savings problem is also exacerbated by those employees who enroll in their employer's plan, but do not assume responsibility for investment of their contributions, leaving their accounts to be invested in a conservative default investment that over the career of the employee is not likely to generate sufficient savings for a secure retirement.

A number of recent studies indicate that significant improvements can be made in 401(k) plan participation and in retirement savings levels through plan design changes. Specifically, the studies show that adoption of automatic enrollment provisions (provisions pursuant to which employees are automatically enrolled in the plan and must affirmatively opt-out of plan participation) by 401(k) plans can dramatically increase plan participation rates.[1] However, most surveys suggest that fewer than 20 percent of the employers sponsoring 401(k) plans have adopted an automatic enrollment provision.[2]

Many of the studies also indicate that the accumulation of retirement savings in automatic enrollment plans depends heavily on the default investment alternative and the default contribution rate provided under the plan.[3] The scope of this proposal is limited to default investment alternatives in which individual account plan assets are invested on behalf of those participants or beneficiaries who fail to give investment instructions. Modification of contribution rates implicates issues beyond the jurisdiction of the Department of Labor.

Several studies note that the contributions of automatically enrolled participants are frequently invested in products that present little risk of capital loss, *e.g.*, money market funds, stable value funds and similarly performing investment vehicles.[4] It also appears that many plans without automatic enrollment provisions[5]

[1] Stephen P. Utkus & Jean A. Young, *Lessons from Behavioral Finance and the Autopilot 401(k) Plan*, (Vanguard Center for Retirement Res.) April 2004; Sarah Holden & Jack VanDerhei, *The Influence of Automatic Enrollment, Catch-Up, and IRA Contributions on 401(k) Accumulations at Retirement*, 283 Employee Benefit Res. Inst. Issue Brief (2005). The issue brief indicates that the ''EBRI/ICI model shows that prior to automatic enrollment, 66 percent of eligible workers at year-end 2000 were participants in 401(k) plans, while immediately after adding automatic enrollment to the model, the participation rate rises to 92 percent of eligible employees.'' *Id.* at 4. *See also* James J. Choi, David Laibson, & Brigitte C. Madrian, *Plan Design and 401(k) Savings Outcomes*, 57 National Tax J. 275 (2004); *see also* James J. Choi, David Laibson, Brigitte Madrian, & Andrew Metrick, *For Better or For Worse: Default Effects and 401(k) Savings Behavior* (Pension Research Council, Working Paper No. 2002–2, 2001), available at *http://prc.wharton.upenn.edu/prc/PRC/WP/WP2002–2.pdf.*

[2] The incidence of automatic enrollment appears to be growing, by one estimate from 8.4 percent of plans in 2003 to 10.5 percent in 2004 (*48th Annual Survey of Profit Sharing and 401(k) Plans*, (Profit Sharing/401(k) Council of America, Chicago, Ill.), 2005, at 36), by another from 14 percent in 2003 to 19 percent in 2005 (*Survey Findings: Trends and Experiences in 401(k) Plans 2005*, (Hewitt Associates LLC), 2005, at 1, 13). Another survey found no growth between 2003 and 2004 (*2004 Annual 401(k) Benchmarking Survey* (Deloitte Consulting LLP), 2004, at 6).

[3] See studies cited supra note 2. *See also* Stephen P. Utkus, *Selecting a Default Fund for a Defined Contribution Plan* (Vanguard Center for Retirement Res.), July 2004.

[4] Of the responding plans with automatic enrollment, the default investment option was a stable value fund for 26.9%, a money market fund for 23.7%, a balanced fund for 29%, a life cycle fund for 8.6%, a professionally managed account for 6.5%, and 5.4% were reported as ''other.'' *48th Annual Survey of Profit Sharing/401(k) Plans*, supra note 2, at 37, Table 64. Other surveys indicate the use of money market, stable value and similarly performing investment vehicles at 58 percent (*2004 Annual 401(k) Benchmarking Survey*, supra note 2, at 7, Exhibit 20) and 81 percent (Stephen P. Utkus, *Selecting A Default Fund for a Defined Contribution Plan*, (Vanguard Center for Retirement Res.), Volume 14, June 2005, at 3).

[5] This proposal encompasses situations beyond automatic enrollment. Examples include: failure of a participant or beneficiary to provide investment instruction following the elimination of an investment alternative or a change in service provider, failure of a participant or beneficiary to

utilize similar capital preservation default investment products for those employees who enroll in the plan but fail to direct the investment of their contributions or their employer's matching contributions. As a short-term investment, money market or stable value funds may not significantly affect retirement savings. Such investments can play a useful role as a component of a diversified portfolio. However, when such funds become the exclusive investment of participants or beneficiaries, it is unlikely that the rate of return generated by those funds over time will be sufficient to generate adequate retirement savings for most participants or beneficiaries.[6]

A frequently cited impediment to adoption of automatic enrollment provisions in individual account plans is the assumption of fiduciary responsibility for the investment decisions that the plan fiduciary must make on behalf of the automatically enrolled participants. In the case of a participant directed individual account plan designed to comply with the requirements of ERISA section 404(c)(1), responsibility for the result of specific investment directions rests with the directing plan participant or beneficiary, rather than the plan sponsor or other fiduciaries.[7] Before enactment of the Pension Protection Act, which became law on August 17, 2006, the Department indicated that a participant or beneficiary would not be considered to have exercised control when the participant or beneficiary is merely apprised of investments that will be made on his or her behalf in the absence of instructions to the contrary.[8] In effect, the Department treated the plan fiduciary's investment decision on behalf of a participant or beneficiary as if the decision were made in connection with a participant directed individual account plan that is not designed, or fails, to meet the conditions for a section 404(c) plan. While some employers, in adopting automatic enrollment provisions or otherwise dealing with the absence of investment direction from plan participants, have been willing to assume fiduciary responsibility for their investment decisions, many of those employers attempt to minimize their fiduciary liability by limiting default investments to funds that emphasize preservation of capital and little risk of loss (e.g., money market and stable value funds).

As part of the Pension Protection Act, section 404(c) of ERISA was amended to provide relief accorded by section 404(c)(1) to fiduciaries that invest participant assets in certain types of default investment alternatives in the absence of participant investment direction. Specifically, section 624(a) of the Pension Protection Act added a new section 404(c)(5) to ERISA. Section 404(c)(5)(A) of ERISA provides that, for purposes of section 404(c)(1) of ERISA, a participant in an individual account plan shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant, are invested by the plan in accordance with regulations prescribed by the Secretary of Labor. Section 624(a) of the Pension Protection Act directed that such regulations provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both. In the Department's view, this statutory language provides the stated relief to fiduciaries of any participant directed individual account plan that complies with its terms and with those of the Department's proposed regulation under section 404(c)(5) of ERISA. This relief therefore, is not contingent on a plan being an ''ERISA 404(c) plan'' or otherwise meeting the requirements of the Department's regulations at 2550.404c–1.

Section 624(a) of the Pension Protection Act also added notice requirements in section 404(c)(5)(B)(i) and (ii) of ERISA. Section 404(c)(5)(B)(i) requires that each participant—(I) receive, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant, such contributions and earnings will be invested, and (II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation. Section 404(c)(5)(B)(ii) requires each notice to be sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and to be written in a manner calculated to be understood by the average employee eligible to participate.

The amendments made by section 624 of the Pension Protection Act shall apply to plan years beginning after December 31, 2006. Section 624(b) of the Pension Protection Act directed the Department to issue final regulations under section 404(c)(5)(A) of ERISA no later than 6 months of the date of enactment of the Pension Protection Act.

In an effort to increase plan participation through the adoption of automatic enrollment provisions, and increase retirement savings through the utilization of default investments that are more likely to increase retirement savings for participants and beneficiaries who do not direct their own investments, the Department, exercising its authority under section 505 of ERISA and consistent with section 624 of the Pension Protection Act, is proposing to provide relief to fiduciaries of participant directed individual account plans that invest participant assets in certain types of default investment alternatives in the absence of participant investment direction. The proposed regulation is described below.

B. Overview of Proposal

Scope of the Fiduciary Relief

The proposal would, upon adoption, implement the fiduciary relief afforded by ERISA section 404(c)(5), under which a participant, who does not give investment directions, will be treated as exercising control over his or her account with respect to assets that the plan invests in a qualified default investment alternative. See § 2550.404c–5(a)(1).

The relief provided by the proposed regulation is conditioned on the use of certain investment alternatives, but the limitations of the proposed regulation should not be construed to indicate that the use of investment alternatives not identified in the proposed regulation as qualified default investment alternatives would be imprudent. For example, the Department recognizes that investments in money market funds, stable value products and similarly performing investment vehicles may be prudent for some participants or beneficiaries.

provide investment instruction following a rollover from another plan, and any other failure of a participant or beneficiary to provide investment instruction.

[6] Investments in capital preservation vehicles deprive investors of the opportunity to benefit from the returns generated by equity securities that have historically generated higher returns than fixed income investments.

[7] *See* Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans), 57 FR 46,906 (Oct.13, 1992) (codified at 29 CFR 2550.404c–1).

[8] *See* Rev. Rul. 98–30, 1998–1 C.B. 1273; *see also* Rev. Rul. 2000–8, 2000–1 C.B. 617; *see also* Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans), 57 FR at 46924; *see also* Retirement Plans, Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) Regulations, 69 FR 78144, 78146 n. 2 (Dec. 29, 2004) (codified at 26 CFR pts. 1 & 602).

Paragraph (b) of § 2550.404c–5 defines the scope of the fiduciary relief provided. Specifically, paragraph (b)(1) provides that, subject to certain exceptions, a fiduciary of an individual account plan that permits participants and beneficiaries to direct the investment of assets in their accounts and that meets the conditions of the regulation, as set forth in paragraph (c) of § 2550.404c–5, shall not be liable for any loss under part 4 of title I, or by reason of any breach, that is the direct and necessary result of investing all or part of a participant's or beneficiary's account in a qualified default investment alternative, or of investment decisions made by the entity described in paragraph (e)(3) in connection with the management of a qualified default investment alternative. The scope of this relief is the same as that extended to plan fiduciaries under ERISA section 404(c)(1)(B) in connection with carrying out investment directions of plan participants and beneficiaries in an ''ERISA section 404(c) plan'' as described in 29 CFR 2550.404c–1(a), although it is not necessary for a plan to be an ERISA section 404(c) plan in order for the fiduciary to obtain the relief accorded by this proposed regulation. As with section 404(c)(1) of the Act and the regulation issued thereunder (29 CFR 2550.404c–1), the proposed regulation would not provide relief from the general fiduciary rules applicable to the selection and monitoring of a default investment alternative or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses. See paragraph (b)(2) of § 2550.404c–5. Paragraph (b) further makes clear that nothing in the proposed regulation relieves an investment manager from its general fiduciary duties or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses. See paragraph (b)(3) of § 2550.404c–5. In addition, the proposed regulation provides no relief from the prohibited transaction provisions of section 406 of ERISA or from any liability that results from a violation of those provisions, including liability for any resulting losses. See paragraph (b)(4) of § 2550.404c–5.

Like other investment alternatives made available under a plan, a plan fiduciary would be required to carefully consider investment fees and expenses in choosing a qualified default investment alternative for purposes of the proposed regulation. To the extent that a plan offers more than one investment alternative that could constitute a qualified default investment alternative, the Department anticipates that fees and expenses would be an important consideration in selecting among the alternatives.

Conditions for the Fiduciary Relief

The conditions for relief are set forth in paragraph (c) of the proposal. The proposal has six conditions.

The first condition requires that assets invested on behalf of participants or beneficiaries under the proposed regulation be invested in a ''qualified default investment alternative.'' See § 2550.404c–5(c)(1). ''Qualified default investment alternatives'' are defined in paragraph (e) of the proposed regulation and discussed in detail below. The second condition provides that the participant or beneficiary on whose behalf assets are being invested in a qualified default investment alternative had the opportunity to direct the investment of assets in his or her account but did not direct the assets. See § 2550.404c–5(c)(2). In other words, no relief is available when a participant or beneficiary has provided affirmative investment direction concerning the assets invested on the participant's or beneficiary's behalf.

The third condition requires that the participant or beneficiary on whose behalf an investment in a qualified default investment alternative may be made is furnished a notice within a reasonable period of time of at least 30 days in advance of the first such investment, and within a reasonable period of time of at least 30 days in advance of each subsequent plan year. As described in the regulation, the required notice can be furnished in the plan's summary plan description, summary of material modifications, or as a separate notification. See § 2550.404c–5(c)(3). The specific content requirements for the notice are described in paragraph (d) of the proposed regulation and discussed in detail below.

The Department notes that a similar notice requirement is contained in section 401(k)(13)(E) of the Internal Revenue Code (Code), as amended by the Pension Protection Act. The Department anticipates that the notice requirements of this proposed regulation and the notice requirements of section 401(k)(13)(E) of the Code could be satisfied in a single notice.

The Department further notes that the phrase—''in advance of the first such investment [in a qualified default investment alternative]''—is not intended to foreclose availability of relief to fiduciaries that, prior to the adoption of a final regulation, invested assets on behalf of participants and beneficiaries in a default investment alternative that would constitute a ''qualified default investment alternative'' under the regulation. In such cases, the phrase ''in advance of the first such investment'' should be read to mean the first investment with respect to which relief under the proposed regulation is intended to apply after the effective date of the regulation. The Department is proposing to make this regulation effective 60 days after publication of the final rule in the **Federal Register**.

The fourth condition of the proposed regulation requires that the terms of the plan provide that any material provided to the plan relating to a participant's or beneficiary's investment in a qualified default investment alternative (*e.g.*, account statements, prospectuses, proxy voting material) will be provided to the participant or beneficiary. See § 2550.404c–5(c)(4).

The fifth condition requires that any participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative be afforded the opportunity, consistent with the terms of the plan (but in no event less frequently than once within any three month period), to transfer, in whole or in part, such assets to any other investment alternative available under the plan without financial penalty. See § 2550.404c–5(c)(5). This provision assures that participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative have the same opportunity as other plan participants and beneficiaries to direct the investment of their assets, and that neither the plan nor the qualified default investment alternative impose financial penalties that would restrict the rights of participants and beneficiaries to direct their assets to other investment alternatives available under the plan. This provision does not confer greater rights on participants or beneficiaries whose accounts the plan invests in qualified default investment alternatives than are otherwise available under the plan with respect to the timing of investment directions. Thus, if a plan provides participants and beneficiaries the right to direct investments on a quarterly basis, those participants and beneficiaries with investments in a qualified default investment alternative need only be afforded the opportunity to direct their investments on a quarterly basis. Similarly, if a plan permits daily investment direction, participants and beneficiaries with investments in a qualified default investment alternative

must be permitted to direct their investments on a daily basis.

The Department notes that this proposal does not address or provide relief with respect to the direction of investments out of a qualified default investment alternative into another investment alternative available under the plan. See generally section 404(c)(1) of ERISA and 29 CFR 2550.404c–1.

The last condition requires that the plan offer participants and beneficiaries the opportunity to invest in a ''broad range of investment alternatives'' within the meaning of 29 CFR 2550.404c–1(b)(3).[9] See § 2550.404c–5(c)(6). For purposes of the proposed regulation, the Department believes that participants and beneficiaries should be afforded a sufficient range of investment alternatives to achieve a diversified portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the pension plan participant or beneficiary. The Department believes that the application of the ''broad range of investment alternatives'' standard of the section 404(c) regulation accomplishes this objective. Moreover, the Department believes that virtually all individual account plans that provide for participant direction, without regard to whether such plans meet all the requirements for an ERISA section 404(c) plan, likely will meet this standard without having to undertake significant changes in available investment alternatives.

Notices

As discussed above, relief under the proposed regulation is conditioned on furnishing participants and beneficiaries advance notification concerning the default investment provisions of their plan. See § 2550.404c–5(c)(3). The specific information required to be contained in the notice is set forth in paragraph (d) of the regulation.

Paragraph (d) of § 2550.404c–5 requires that the notice to participants and beneficiaries be written in a manner calculated to be understood by the average plan participant and contain the following information: (1) A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant and beneficiary in a qualified default investment alternative; (2) a description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative; (3) a description of the right of the participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative to direct the investment of those assets to any other investment alternative under the plan, without financial penalty; and (4) an explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

It is the view of the Department that the notice requirements of this proposed regulation are consistent with the notice requirements added to section 404(c)(5) of ERISA by section 624 of the Pension Protection Act. The Department believes the required information is sufficient to put participants and beneficiaries on notice as to the consequences of failing to direct investment of the assets in their account, and encourages active decisionmaking by participants and beneficiaries. The Department invites suggestions as to whether additional information should be considered for inclusion in the notice.

Qualified Default Investment Alternatives

Under the proposal, relief from fiduciary liability is provided with respect to only those assets invested on behalf of a participant or beneficiary in a ''qualified default investment alternative.'' See § 2550.404c–5(c)(1). Paragraph (e) of § 2550.404c–5 sets forth five requirements for a qualified default investment alternative.

The first requirement is intended to limit investment in employer securities as part of a qualified default investment alternative's investment strategy. Subject to two exceptions, the proposal provides that a qualified default investment alternative shall not hold or permit the acquisition of employer securities. See § 2550.404c–5(e)(1)(i).

The first exception to this general prohibition is applicable to employer securities held or acquired by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.,* or a similar pooled investment vehicle regulated and subject to periodic examination by a State or Federal agency and with respect to which investment in such securities is made in accordance with the stated investment objectives of the investment vehicle and independent of the plan sponsor or an affiliate thereof. While the Department does not believe it is appropriate for a qualified default investment alternative to encourage investments in employer securities, the Department also recognizes that an absolute prohibition against holding or investing in employer securities may unnecessarily complicate the selection and monitoring of qualified default investment alternatives by publicly traded companies, the stock of which may be held or acquired pursuant to an investment strategy wholly independent of the employer. The Department believes that the foregoing exception is sufficiently broad to accommodate publicly traded companies and pooled investment vehicles that may invest in such companies.

The second exception is for employer securities acquired as a matching contribution from the employer/plan sponsor or at the direction of the participant or beneficiary. This exception is intended to make clear that an investment management service will not be precluded from serving as a qualified default investment alternative under § 2550.404c–5(e)(5)(iii) merely because the account of a participant or beneficiary holds employer securities acquired as matching contributions from the employer/plan sponsor, or acquired as a result of prior direction by the participant or beneficiary, provided that the investment management service has the authority to dispose of such securities.

In the case of employer securities acquired as matching contributions that are subject to a restriction on transferability, relief would not be available until the investment management service can exercise discretion over such securities, at the expiration of the restriction. Although an investment management service would be responsible for determining whether and to what extent the account should continue to hold investments in employer securities, the investment management service could not, except as part of an investment company or similar pooled investment vehicle, exercise its discretion to acquire additional employer securities on behalf

[9] 29 CFR 2550.404c–1(b)(3) provides that ''[a] plan offers a broad range of investment alternatives only if the available investment alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to: (A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject; (B) Choose from at least three investment alternatives: (1) Each of which is diversified; (2) each of which has materially different risk and return characteristics; (3) which in the aggregate enable the participant or beneficiary by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and (4) each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio; * * *''

of an individual account without violating § 2550.404c–5(e)(1).

In the case of prior direction by a participant or beneficiary, if the participant or beneficiary provided investment direction with respect to employer securities, but failed to provide investment direction following an event, such as a change in investment alternatives, and the terms of the plan provide that in such circumstances the account's assets are invested in a default investment alternative, the proposed regulation would permit an investment management service to hold and manage those employer securities in the absence of participant or beneficiary direction. While the investment management service may not acquire additional employer securities using participant contributions, the investment management service may reduce the amount of employer securities held by the account of the participant or beneficiary.

The second requirement provides that, except as otherwise provided in paragraph (c)(5), a qualified default investment alternative may not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer, in whole or in part, his or her investment from the qualified default investment alternative to any other investment alternative available under the plan. The Department does not believe that limits on the ability of a participant or beneficiary to move from a qualified default investment alternative should be permitted by the plan or the qualified default investment alternative.

The third requirement is that a qualified default investment alternative be either managed by an investment manager, as defined in section 3(38) of the Act, or an investment company registered under the Investment Company Act of 1940. The Department believes that when plan fiduciaries are relieved of liability for underlying investment management/asset allocation decisions, those responsible for the investment management/asset allocation decisions must be investment professionals who acknowledge their fiduciary responsibilities and liability under ERISA. For this reason, the proposed regulation requires that, except in the case of registered investment companies, those responsible for the management of a qualified default investment alternative be ''investment managers'' within the meaning of section 3(38) of ERISA.[10] Inasmuch as the assets of an investment company registered under the Investment Company Act of 1940 do include plan assets solely by virtue of a plan's investment in securities issued by such investment company[11] and such investment companies are subject to Federal and State regulation and oversight, the proposal permits an investment company registered under the Investment Company Act of 1940 to constitute a ''qualified default investment alternative'' provided that the other conditions of the proposed regulation are satisfied.

The fourth requirement provides that a qualified default investment alternative is diversified so as to minimize the risk of large losses.

The last requirement for a qualified default investment alternative conditions relief on the use of one of three types of investment products, portfolios or services. See § 2550.404c–5(e)(5). In defining qualified default investment alternatives, the Department presumes that, in those instances when a participant or beneficiary chooses not to direct the investment of the assets in their account, the only objective and readily available information relevant to making an investment decision on behalf of the participant is age. For this reason, the investment objectives of the qualified default investment alternatives are not required to take into account other factors, such as risk tolerances, other investment assets, etc.

The first alternative is an investment fund product or model portfolio that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocation and associated risk levels over time with the objective of becoming more conservative (*i.e.*, decreasing risk of losses) with increasing age. As noted above, asset allocation decisions for eligible products and portfolios are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''life-cycle'' or ''targeted-retirement-date'' fund or account. See § 2550.404c–5(e)(5)(i). The reference to ''an investment fund product or model portfolio'' is intended to make clear that this alternative might be a ''stand alone'' product or a ''fund of funds'' comprised of various investment options otherwise available under the plan for participant investments. In the context of a fund of funds portfolio, it is likely that money market, stable value and similarly performing capital preservation vehicles will play a role in comprising the mix of equity and fixed-income exposures.

The second alternative is an investment fund product or model portfolio that is designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole. For purposes of this alternative, asset allocation decisions for such products and portfolios are not required to take into account the age of an individual participant, but rather focus on the demographics of the participant population as a whole. An example of such a fund or portfolio may be a ''balanced'' fund. As with the preceding alternative, the reference to ''an investment fund product or model portfolio'' is intended to make clear that this alternative might be a ''stand alone'' product or a ''fund of funds'' comprised of various investment options otherwise available under the plan for participant investments. In the context of a fund of funds portfolio, it is likely that money market, stable value and similarly performing capital preservation vehicles will play a role in comprising the mix of equity and fixed-income exposures for this alternative.

Unlike the first alternative, which focuses on the age, target retirement date (such as normal retirement age under the plan) or life expectancy of an individual participant, the second alternative requires a fiduciary to take into account the demographics of the plan's participants, similar to the considerations a fiduciary would take into account in managing an individual account plan that does not provide for participant direction. For this reason, a

[10] Section 3(38) of ERISA defines the term ''investment manager'' to mean ''any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2) [29 U.S.C. 1102(a)(2)])—(A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*]; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in that Act [15 U.S.C. 80b–1 *et seq.*]; or (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan.''

[11] *See* ERISA section 401(b)(1).

fiduciary may, in connection with the duty to monitor investment alternatives available under the plan, conclude that a new or additional investment fund product or model portfolio is required to take into account significant changes in the demographics (e.g., age) of the plan's participant population.

The third alternative is an investment management service with respect to which an investment manager allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such portfolios change their asset allocation and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. As with the first alternative, the proposed regulation makes clear that, as with the other alternatives described in the regulation, asset allocation decisions are not required to take into account risk tolerances, other investments or other preferences of an individual participant. An example of such a service may be a ''managed account.'' [12]

Although investment management services are included within the scope of relief, the Department notes that relief similar to that provided by this proposed regulation is available to plan fiduciaries under the statute. Specifically, section 402(c)(3) of ERISA provides that ''a person who is a named fiduciary with respect to control or management of the assets of a plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.'' Section 405(d) of ERISA provides that ''[i]f an investment manager or managers have been appointed under section 402(c)(3), then * * * no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.'' The Department included investment management services within the scope of fiduciary relief in order to avoid any ambiguity concerning the scope of relief available to plan fiduciaries in the context of participant directed individual account plans.

[12] With regard to this alternative, the Department notes that in 2003, a working group of the Advisory Council on Employee Welfare and Pension Benefit Plans submitted a report on optional professional management in defined contribution plans. While the Advisory Council report focused on the use of managed account services in which participants played an active role in preparing an investment profile, the report nonetheless provides support for including such services within the definition of a qualified default investment alternative. This report may be accessed at *http://www.dol.gov/ebsa/publications/AC_1107b03_report.html.*

C. Miscellaneous Issues

Preemption

Section 902 of the Pension Protection Act added a new section 514(e)(1) to ERISA providing that notwithstanding any other provision of section 514, title I of ERISA shall supersede any State law that would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. Section 902 further added section 514(e)(2) to ERISA defining the term ''automatic contribution arrangement'' as an arrangement under which a participant: may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and under which such contributions are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of ERISA. The Department specifically requests comments on whether and to what extent regulations would be helpful in addressing the preemption provisions of section 514(e) of ERISA.

Enforcement

Section 902 of the Pension Protection Act amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess a civil penalty against any person of up to $1,100 a day for each violation by any person of section 302(b)(7)(F)(vi) or section 514(e)(3) of ERISA. Implementing regulations will be developed in a separate rulemaking.

D. Request for Comments

The Department invites comments from interested persons on all aspects of the proposed regulation. Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: Default Investment Regulation. Commenters are encouraged to submit comments electronically to *e-ORI@dol.gov* or *www.regulations.gov.* All comments received will be available to the public at *http://www.dol.gov/ebsa* and *www.regulations.gov.* Comments also will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Comments on this proposal should be submitted to the Department on or before November 13, 2006.

E. Effective Date

The Department proposes to make this regulation effective 60 days after the date of publication of the final rule in the **Federal Register**.

F. Regulatory Impact Analysis

Summary

This proposed regulation is expected to have two major, positive economic consequences. First, default investments will be directed toward higher-return portfolios boosting average account performance. Second, automatic enrollment provisions will become more common boosting participation in retirement savings plans. Both of these effects will tend on average and on aggregate to increase retirement savings, especially among younger workers with low earnings and frequent job changes. A substantial number of individuals will enjoy significant increases in retirement income.[13] The magnitude of these effects will be large in absolute terms and proportionately large for many directly affected individuals, but will be modest relative to overall aggregate retirement savings.

The magnitude of the proposed regulation's effects will depend on plan sponsor and participant choices. The effects will be cumulative and will become fully realized only after workers beginning their careers today reach retirement. For these reasons, any estimates of the regulation's effects are subject to substantial uncertainty. The Department has developed low- and high-impact estimates, to illustrate a range of potential long-term effects.

[13] In rare cases, retirement income may decrease slightly. A few individuals may wind up contributing for some period of time at a default rate that is lower than the rate they otherwise would have elected (this risk will be minimized in plans that automatically escalate default contribution rates). A few may realize lower returns in a qualified default investment alternative than they would otherwise have realized.

In the very long run the proposed regulation is predicted to increase aggregate 401(k) plan account balances by between 2 percent and 5 percent, or approximately $45 billion and $90 billion if represented at 2005 levels. The portion invested in equity will increase by between 3 percent and 5 percent, or $27 billion and $48 billon.

For individuals born in 1985 and surviving to age 67, holding other factors constant, low-impact estimates suggest that the proposed regulation will increase pension income by an average of $2,010 per year (in 2005 dollars) for 10 percent, but decrease it by $1,120 per year on average for 5 percent. Pension income would be unchanged for the remaining 85 percent. High-impact estimates suggest that average annual pension income will increase by $2,740 for 14 percent, fall by $1,460 for 6 percent, and be unchanged for 80 percent.

The costs and benefits of the proposed regulation are not simple, direct functions of the foregoing gross dollar estimates. Increases in retirement savings due to automatic enrollment will be offset by either decreases in current consumption or reductions in other savings, so net benefits will be smaller than the predicted increases in retirement savings. The proposed regulation may also have macroeconomic consequences, which are likely to be small but positive. An increase in retirement saving is likely to promote investment and long-term economic productivity and growth. The Department therefore concludes that the benefits of this proposed regulation will exceed its costs by a wide margin.

In accordance with OMB Circular A–4(available at *http://www.whitehouse.gov/omb/circulars/a004/a–4.pdf*), Table 1 below depicts an accounting statement showing the annualized benefits and transfers associated with the provisions of this proposed rule.

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Table 1	Estimates		Units		
Category	**Low Estimate**	**High Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Benefits					
Annualized Quantified ($millions/year)	1,900.0	3,800.0	2005	n/a	2007 and later
Note:	Annual contributions to 401(k) plans are expected to grow by between $1.9 billion and $3.8 billion, expressed at 2005 levels. As explained below, these estimates were derived from the simulated experience of a 1985 birth cohort. Each individual in the cohort was sampled once at a random age from 21 to 65. Their observed contributions were aggregated to produce a proxy for a level annuity equivalent of aggregate contributions over time. (This proxy approach, which is not derived by discounting future levels, is explained below under the heading "Basis of Estimates.") Some participants will benefit additionally from an increase in average investment returns. Pension income will increase substantially. The benefits of the proposed regulation are not simple, direct functions of its gross dollar impacts. Increases in retirement savings will be offset by either decreases in current consumption or reductions in other savings. The proposed regulation will have distributional consequences. Increases in pension income will be proportionately larger for those with lower career earnings. The proposed regulation may also have macroeconomic consequences, which are likely to be small but positive.				
Costs					
Qualitative	Plan sponsors may incur some administrative cost in order to meet the conditions of the proposed regulation. The Department generally expects such cost to be low. Adverse consequences are not expected because the adoption of automatic enrollment programs, reliance on the proposed regulation and, therefore, compliance with its provisions, are voluntary on the part of the plan sponsor.				
Transfers					
Other Annualized Monetized ($millions/year)	700.0	1,300.0	2005	n/a	2007 and later
From/To	From: Private employers			To: Employees	
Note:	Increase in aggregate employer matching contributions. For discussion of derivation, see note to "Benefits" immediately above in this table.				
Effects					
State, Local, and/or Tribal Government	Not applicable				
Small Business	Significant impacts are expected to be limited to plan sponsors that adopt automatic enrollment programs as a result of the proposed regulation: approximately 28,000 to 56,000 plans or between 10 percent and 20 percent of all small 401(k) plans. Employer matching contributions to these plans are estimated to increase by between $100 million and $300 million annually (expressed at 2005 levels), constituting a transfer from employers to plan participants. Adverse consequences are not expected because the adoption of automatic enrollment programs, the provision of matching contributions, and reliance on the proposed regulation and compliance with its provisions are voluntary on the part of the plan sponsor.				
Wages	The proposed regulation is expected to increase some plan sponsors' matching contributions. These increases have been characterized here as transfers from plan sponsors to participants. It is possible, however, that the increases will be offset in part or whole by corresponding decreases in wages or other compensation.				
Growth	The proposed regulation may also have macroeconomic consequences, which are likely to be small but positive. An increase in retirement saving is likely to promote investment and long-term economic productivity and growth.				

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Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(1) because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, the Department has undertaken, as described below, an analysis of the costs and benefits of the proposed regulation. The Department believes that the proposed regulation's benefits justify its costs.

Alternatives Considered by the Department

Prior to the enactment of the Pension Protection Act, the Department considered providing relief under section 404(a) of ERISA, rather than section 404(c), in response to concerns that conditioning relief on compliance with the Department's regulations under section 404(c), 29 CFR 2550.404c–1, may deter adoption of automatic enrollment provisions. Inasmuch as the relief provided by recently enacted section 404(c)(5) of ERISA does not condition relief on compliance with the Department's regulations under section 404(c), the Department concluded that adopting a regulation under section 404(c)(5) effectively provided the same relief it considered providing under section 404(a).

In defining the three types of investment products, portfolios or services that may be used as a qualified default investment alternative, the Department applied certain criteria. These criteria included consistency with market trends and mainstream financial planning practices. The Department entertained including as an additional type of investment product near risk-free fixed income instruments. Such instruments might have been defined so as to include money market mutual funds, certain bank deposits, and stable value insurance products. Including such instruments might yield some benefits. It is possible that at least some plan sponsors strongly prefer to use as default investments such instruments rather than any of the three types embraced by the proposed rule. It is further possible that some such sponsors would adopt automatic enrollment programs if and only if the fiduciary relief afforded by the proposed regulation was extended to include such instruments. In that case, including such instruments in the proposed regulation might boost participation and net retirement income for some individuals. The Department believes such cases would be rare, however. The proposed rule, by providing relief from fiduciary liability, is both intended and expected to tilt plan sponsors' default investment preferences away from such instruments and toward the three types it embraces. Moreover, many plan sponsors currently use such instruments as default investments under automatic enrollment programs, and they and others might continue to do so after adoption of the proposed rule. The proposed rule leaves intact the current legal provisions applicable to the use of such instruments as default investments.

On the other hand, including such instruments might erode benefits. Consider plan sponsors that under the proposed rule will adopt automatic enrollment programs and use as default investments one of the three types defined in the proposed rule. If such near-risk-free instruments were included as a fourth type, some of these plan sponsors might instead use such instruments as default investments, thereby reducing average investment performance and retirement income for some individuals. The Department therefore believes that including such instruments would be more likely to erode benefits than to increase them. Accordingly, the Department omitted such instruments from the types defined in the proposed rule.

The Department also considered whether to include or omit an investment fund product or model portfolio that establishes a uniform mix of equity and fixed income exposures for all affected participants, ultimately deciding to include such a type as the second of the three types defined in the proposed rule. Such a product or model portfolio has some drawbacks relative to the other two types of investment products, portfolios or services that may be used as a qualified default investment alternative. Unlike the latter types, its target level of risk must be appropriate for participants of the plan as a whole but cannot be separately calibrated for each participant or for particular classes of participants. Therefore, while its risk level may be appropriate for all affected participants it is unlikely to be optimal for all. However, such a product or model portfolio may also have relative advantages. Compared with the other two types such a product or portfolio may be simpler, less expensive and easier to explain and understand. These advantages may outweigh the potential advantage of more customized risk levels, especially for plans covering relatively homogenous populations. And the inclusion of such products or model portfolios along with the other two types of investment products, portfolios or services might help heighten competition in the market and thereby enhance product quality and affordability across all three types.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Department proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3) of ERISA, the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3) of ERISA, the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans that cover fewer than 100 participants and satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Department believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration

(SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.). The Department therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities.

The reasons the Department is proposing this regulation, and the objectives of and legal basis for the proposed regulation, are discussed earlier in this preamble.

The Department has concluded that the primary effects of this proposed regulation will be to increase retirement savings and pension incomes for participants and beneficiaries by directing default investments to higher-performing portfolios and by promoting the implementation of automatic enrollment programs in participant directed individual account pension plans. Applying this assessment under the standards of the RFA, the Department believes that the impact of this proposed regulation will fall primarily on participants in participant directed individual account pension plans, and not on the plans themselves or on the employers that sponsor the plans. By promoting automatic enrollment programs and thereby increasing aggregate participant contributions, the proposed regulation may also increase some employers' matching contributions, including matching contributions made by small plans. For reasons explained below, however, the Department has concluded that this effect is not a sufficient basis for concluding that the proposed regulation will have a significant impact on a substantial number of small entities.[14]

Many plan sponsors provide matching contributions. The Department estimates that, if the proposed regulation is finalized, approximately 10 to 20 percent of all small participant directed defined contribution plans, or as many as 28,000 to 56,000 small plans, may adopt automatic enrollment programs and, consequently, may incur additional matching contributions. Such an increase in automatic enrollment programs could have the indirect effect of increasing aggregate matching contributions in small plans by between $100 million and $300 million annually (expressed at 2005 levels). The effect of increased matching contributions is expected to be proportionately similar for small and large entities. However, adverse consequences are not expected, for either large or small plans, because the adoption of automatic enrollment programs and the provision of matching contributions are, generally, voluntary and at the discretion of the plan sponsor. Reliance on the proposed regulation and, therefore, compliance with its provisions are also voluntary on the part of the plan sponsor. Accordingly, it is highly unlikely that the proposed regulation would have a significant impact on a substantial number of small entities. Therefore, the head of the Employee Benefits Security Administration hereby certifies, as required under section 605(b) of the RFA, that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The Department is unaware of any duplicative, overlapping or conflicting federal rules.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Proposed Regulation on Default Investment Alternatives under Participant Directed Individual Account Plans. A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below.

The Department has submitted a copy of the proposed regulation to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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., by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through November 13, 2006, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The proposed Regulation on Default Investment Alternatives under Participant Directed Individual Account Plans (29 CFR 2550.404c–5) would provide certain relief for fiduciaries who make investment decisions on behalf of participants and beneficiaries in individual account pension plans that provide for participant direction of investments when such participants and beneficiaries fail to direct the investment of their account assets. The regulation describes conditions under which a participant who fails to provide investment direction will be treated as having exercised control over assets in his or her account under an individual account plan as provided in section 404(c)(5)(A) of ERISA. The proposed regulation would require that the assets of non-directing participants be invested in one of the qualified default investment alternatives described in the proposed regulation and that certain other specified conditions be met.

[14] The proposed regulation requires affected plans to disclose to participants and beneficiaries certain information related to default investment provisions and default investments. As discussed below in connection with the Paperwork Reduction Act, the burden of compliance with the information collection provisions, which will be borne by plan sponsors and plans, will be minor, relative to the anticipated benefits of the regulation.

This ICR pertains to two separate disclosure requirements that are conditions to the relief created by the proposed regulation, as follows: (1) An annual notice containing specified information that must be provided to any individual whose assets may in the future be invested in a qualified default investment alternative at least 30 days prior to the fiduciary's initial investment, and thereafter at least 30 days before the beginning of each plan year; and (2) pass-through to participants and beneficiaries of any material (such as account statements, prospectuses, and proxy voting material) provided to the plan relating to the participant's or beneficiary's investment in a qualified default investment alternative. The information collection provisions of this proposed regulation are intended to ensure that participants and beneficiaries who are provided the opportunity to direct the investment of their account balances, but who do not do so, are adequately informed about the plan's provisions for default investment and about investments made on their behalf under the plan's default provisions.

The estimates of respondents and responses are derived primarily from the Form 5500 Series filings for the 2003 plan year, which is the most recent reliable data available to the Department. The burden for the preparation and distribution of the disclosures is treated as an hour burden. Additional cost burden derives solely from materials and postage. It is assumed that electronic means of communication will be used in 38 percent of the responses pertaining to annual notices and that such communications will make use of existing systems. Accordingly, no cost has been attributed to the electronic distribution of information.

Annual Notice—29 CFR 2550.404c–5(c)(3). The proposed regulation requires that a notice be provided at least 30 days before any portion of a participant's or beneficiary's account balance is initially invested in a qualified default investment alternative and annually thereafter. The notice must describe (1) the circumstances under which assets in a participant's individual account may be invested in a qualified default investment alternative; (2) the qualified default investment alternative, including its investment objectives, risk and return characteristics (if applicable), and fees and expenses; (3) the participants' and beneficiaries' right to direct the investment of the assets to any other investment alternative offered under the plan, without financial penalty; and (4) where participants and beneficiaries can obtain information about the other investment alternatives available under the plan. The proposed regulation states that the initial notice may be included in the plan's summary plan description or a summary of material modifications, or it may be provided as a separate notice.

The Department estimates that 418,000 [15] participant directed individual account pension plans will prepare and distribute annual notices to 61,612,000 eligible workers, participants and beneficiaries in the first year in which this proposed regulation (if finalized) becomes applicable. Preparation of the annual notice in the first year is estimated to require one-half hour of legal professional time for each plan, for a total aggregate estimate of 209,000 burden hours. For the 62 percent of participants and beneficiaries who will receive the annual notice by mail (38,200,000 individuals), distribution of the annual notice is estimated to require an additional 306,000 hours of clerical time, based on an estimate of one-half minute of clerical time per notice. No additional burden hours are attributed to the distribution of the annual notice to the remaining 38 percent of participants and beneficiaries who will receive this notice electronically (23,413,000 individuals). The total annual burden hours estimated for the annual notice in the first year, therefore, are 515,000. The equivalent cost for this burden hour estimate is $22,548,000 (legal professional time is valued at $83 per hour, and clerical time is valued at $17 per hour).[16]

In addition to burden hours, the Department has estimated annual costs attributable to the annual notice for the first year, based on materials and postage, at $18,718,000. This comprises the material cost for a two-page annual notice ($.10 per notice) to 38,200,000 participants and beneficiaries (62 percent of 61,612,000 participants and beneficiaries), which equals $3,820,000, plus postage at $0.39 per mailing, which equals $14,898,000. Total annual costs for the annual notice in the first year are therefore estimated at $18,718,000.

In years subsequent to the first year of applicability, the Department estimates that annual notices will be prepared only by newly established participant directed individual account pension plans and plans that changed their choice of qualified default investment alternative. For purposes of burden analysis, the Department has assumed that one-third (⅓) of all participant directed individual account plans (139,000 plans) will prepare and distribute new or updated initial notices to all participants and beneficiaries, requiring 24 minutes of legal professional time per notice. The preparation of the initial notice in each subsequent year is estimated to require 56,000 hours. However, the number of participants receiving initial notices stays the same. As in the calculation for the initial year, distribution to the 62 percent of participants and beneficiaries who will receive the initial notice by mail (38,200,000 individuals) will require 306,000 hours and $18,718,000 additional materials and postage cost. (As for the first year, the Department has assumed that electronic distribution of the initial notice in subsequent years will not add any significant additional paperwork burden.)

Based on those assumptions, the Department estimates that the total burden hours for annual notices in each year after the first year of applicability will fall to 361,000 hours. The equivalent cost of such an hour burden (using the same assumptions as for the first year) is $9,823,000. The total cost burden estimated for subsequent years for the annual notice will stay at $18,718,000.

Pass-through Material—29 CFR 2550.404c–5(c)(4). Under the proposed regulation, any material received by a plan (such as account statements, prospectuses, and proxy voting material) that relates to a default investment must be passed through to the participant or beneficiary on whose behalf the default investment was made. The proposed regulation imposes this requirement only with respect to participants and beneficiaries who have an investment in a qualified default investment alternative that was made by default. In conformity with the assumptions underlying the other economic analyses in this preamble, the Department has assumed that, at any given time, 5.3 percent of participants and beneficiaries in participant directed individual account pension plans (2,351,000 individuals) will have default investments. For purposes of this burden analysis, the Department has also assumed that plans will receive materials that must be passed through the participants and beneficiaries on a quarterly basis. This assumption takes into account that many, although not all, plans will receive quarterly account

[15] All numbers used in this paperwork burden estimate have been rounded to the nearest thousand.

[16] Hourly wage estimates are based on data from the Bureau of Labor Statistics 2000 Occupational Employment Survey and data from the 2001 Employment Cost Index, and overhead assumptions by EBSA.

statements and prospectuses, and that plans will also receive other pass-through materials on occasion. These two factors result in an estimate of 9,405,000 responses (distributions of pass-through materials) per year. Duplication and packaging of the pass-through material is estimated to require 1.5 minutes of clerical time per distribution, for an annual hour burden estimate of 235,000 hours of clerical time. The equivalent cost of this hour burden is estimated at $3,997,000. Additional cost burden for the pass-through of material is estimated to include paper cost (40 pages of material yearly per participant or beneficiary) and postage ($.58 per mailing) at $10,157,000 annually for 4 distributions per participant or beneficiary with a default investment.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

OMB Number: 1210–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 417,000.

Responses: 71,017,000.

Frequency of Response: Annually; occasionally.

Estimated Total Annual Burden Hours: 750,000 (first year).

Estimated Total Annual Burden Cost: $28,875,000.

Congressional Review Act

This notice of proposed rulemaking is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million or more.

Discussion of Economic Impacts

Default Investments

A majority [17] of 401(k) plans with automatic enrollment offer as default investment vehicles money market or stable value funds or similarly-performing vehicles. The proposed regulation is expected to reduce this proportion by encouraging plans to offer default investment vehicles that include a mix of equity and fixed income instruments.

As a result of this proposed regulation, it is estimated that in the long run 401(k) plan equity holdings expressed at 2005 levels will increase by between $27 billion and $48 billion. The portion of this estimated increase that is attributable directly to the direction of a larger share of default investments into equity is between $11 billion and $14 billion.[18] The rest is attributable to increased contributions, which are discussed below under the heading ''Participation and Contribution Behavior.''

Account Performance

Historically, over long time horizons, diversified portfolios that include equities have tended to outperform those consisting only of very low risk, short term debt instruments, often by large amounts. From 1926 to 2004, large company stocks returned 10.4 percent annually on average, long-term corporate bonds 5.9 percent, and U.S. Treasury bills 3.7 percent.[19] Stocks are also riskier, however: the standard deviations in annual returns for these three securities classes over this period were 20.3 percent, 8.6 percent and 3.1 percent.[20] One-year large company stock returns ranged from −43 percent to 54 percent, long-term corporate bond returns from −8 percent to 43 percent, and U.S. Treasury bill returns from 0 percent to 15 percent.[21] But 20-year returns on these classes of securities ranged respectively from 3 percent to 18 percent, 1 percent to 12 percent, and from 0.4 percent to 8 percent.[22] Based on this history, it is widely believed to be advantageous for long-term savers, such as workers saving for retirement, to invest a substantial portion of their assets in equity.[23]

As noted above, this proposed regulation is expected to result in the direction of default investments from very low-risk instruments such as money market funds to diversified portfolios that include a substantial proportion of equities. If historical patterns hold, this in turn is expected to improve investment results for a large majority of affected individuals. As a result of this proposed regulation, in the long run aggregate 401(k) account balances are estimated to increase by between $45 billion and $89 billion, expressed at 2005 levels. The portion of this estimated increase directly attributable to direction of default investments from very low-risk instruments into higher-performing portfolios is between $7 billion and $9 billion; the remainder is attributable to expected increases in contributions, discussed below under the heading ''Participation and Contribution Behavior.''

Automatic Enrollment

Automatic enrollment programs are growing in popularity. These programs covered only about 5 percent of workers eligible for 401(k) plans in 2002,[24] but the number may have increased to 18 percent today [25] and could reach 25 percent in the near future. The Department expects and intends that this proposed regulation, by alleviating some fiduciary concerns that might otherwise discourage implementation of automatic enrollment programs, will promote wider implementation of such programs. As a result of the proposed regulation, in the near future such programs may cover 35 percent to 45 percent of eligible workers rather than 25 percent.[26]

[17] Various surveys estimate the proportion at 50 percent (*48th Annual Survey of Profit Sharing/401(k) Plans, supra* note 2, at 37, Table 64), 58 percent (*2004 Annual 401(k) Benchmarking Survey, supra* note 2, at 7, Exhibit 20), and 81 percent (Utkus, *supra* note 4, at 3).

[18] It should be noted that these estimates pertain only to default investments made on behalf of default participants under automatic enrollment programs. The default investment proposed regulation is not so limited. Therefore, these estimates are likely to omit some of the direction of a larger share of default investments into equity that will occur under the proposed regulation. The Department lacks data on the amount of default investment activity occurring outside the default participation context, or any basis for predicting whether or how much such activity might increase as a result of the proposed regulation. The Department invites comments on these questions.

[19] Stocks, Bonds, Bills and Inflation 2005 Yearbook, Ibbotson Assocs., at 117, Table 6–7 (2005).

[20] *Id.*

[21] *Id.* at 38–39, Table 2–5.

[22] *Id.* at 50–51, Table 2–11.

[23] *See, e.g.*, Utkus, *supra* note 4.

[24] Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry in the United States, 2002–2003, Bulletin 2573, at 109 (2005).

[25] EBSA estimate. The proportion of plans in various size classes that provide automatic enrollment was taken from *48th Annual Survey of Profit Sharing/401(k) Plans, supra* note 2, at 36, Table 61. EBSA took a weighted average of these proportions, reflecting the distribution of 401(k) participants across the plan size classes, as estimated by EBSA based on annual reports filed by plans with EBSA.

[26] The incidence of automatic enrollment appears to be growing, by one estimate from 8.4 percent of plans in 2003 to 10.5 percent in 2004 (*Id.* at 36), by another from 14 percent in 2003 to 19 percent in 2005 (*Survey Findings: Trends and Experiences in 401(k) Plans, 2005, supra* note 2, at 1, 13). Another survey found no growth between 2003 and 2004. *2004 Annual 401(k) Benchmarking Survey,*

Continued

Participation and Contribution Behavior

Analyses of automatic enrollment programs demonstrate that such programs increase participation. The increase is most pronounced among employees whose participation rates otherwise tend to be lowest, namely lower-paid, younger and shorter-tenure employees. Automatic enrollment programs increase many such employees' contribution rates from zero to the default rate, often supplemented by some employer matching contribution. These additional contributions tend to come early in the employees' careers and therefore can add disproportionately to retirement income as investment returns accumulate over a long period.[27]

Plans implementing automatic enrollment programs may increase their participation rates on average from approximately 70 percent to perhaps 90 percent. Consequently, the Department estimates that this proposed regulation will increase overall 401(k) participation rates from 72 percent to between 75 percent and 77 percent. Aggregate annual contributions are expected to grow on net by between $1.9 billion and $3.8 billion, expressed at 2005 levels. These and related estimates are summarized Table 2 below.

Table 2

Estimated Effect of Proposed Regulation on 401(k) Participation and Contributions

	Low Impact	High Impact
Percentage point increase in participation rate of eligible employees	3%	5%
Added annual contributions ($billions, 2005 level)	$2.7	$5.2
Discouraged annual contributions ($billions, 2005 level)	$0.8	$1.4
Net growth in contributions ($billions, 2005 level)	$1.9	$3.8
Long-term increase in aggregate account balances ($billions, 2005 level)	$45	$90

Retirement Income From 401(k) Plans

For all individuals born in 1985 and surviving to age 67, holding other factors constant, low-impact estimates suggest that the proposed regulation may increase pension income by an average of $2,010 per year (in 2005 dollars) for 10 percent, but could decrease it by $1,120 per year on average for 5 percent. Pension income would be unchanged for the remaining 85 percent. High-impact estimates suggest that average annual pension income may increase by $2,740 for 14 percent, fall by $1,460 for 6 percent, and be unchanged for 80 percent. The number of individuals experiencing increases in retirement income is estimated to be approximately twice the number experiencing decreases, and the average gains are estimated to be approximately twice the size of average losses. These estimates are summarized Table 3 below. (The incidence and size of gains are likely to be larger than estimated here, and those of any losses are likely to be smaller, if plans provide for escalating default contribution rates or higher default contribution rates than assumed here.)

supra note 2, at 6. Indicators of future growth are mixed. Most point to a potential for large growth, but it is unclear how much of this growth will be realized. The same survey that found no growth between 2003 and 2004 also found that, in 2004, 14 percent of plan sponsors had not yet implemented but were considering implementing automatic enrollment. *Id.* at 6, Exhibit 17. By another estimate, in 2005, 28 percent of plan sponsors indicated that they were likely to implement automatic enrollment over the next year. *See Survey Findings: Hot Topics in Retirement 2005,* (Hewitt Associates LLC) 2005, at 11. But 53 percent indicated they were unlikely to implement any automatic plan features, including 28 percent that cited concern about assuming additional fiduciary responsibility. *Id.* at 12. To estimate the impact of this proposed regulation on account balances and pension income, EBSA adopted the following assumptions. If current trends and concerns continued, the incidence of automatic enrollment would soon reach 25 percent of eligible employees, and then remain at that level. The proposed regulation, by relieving fiduciary concerns that discourage implementation of automatic enrollment, would increase that incidence to between 35 percent (low impact estimates) and 45 percent (high impact estimates). In addition, new provisions for a nondiscrimination safe harbor under the Code for ''qualified automatic contribution arrangements,'' added by section 902 of the Pension Protection Act, are likely to affect the future incidence of automatic enrollment. These assumptions are highly uncertain and EBSA invites comments on their validity and suggestions as to how to develop more reliable estimates of the future incidence of automatic enrollment programs.

[27] However, there is also evidence that automatic enrollment programs can have the effect of lowering contribution rates for a few employees below the level that they would have elected absent automatic enrollment. At present, surveys indicate that the default contribution rate is usually either 2 percent or 3 percent of salary. Some employees who might otherwise have enrolled (either at first eligibility or later) and elected a higher contribution rate may instead permit themselves to be enrolled at the default rate. Once contributing at the default rate they may continue at that rate for some time. *See, e.g.,* James J. Choi, David Laibson, Brigitte C. Madrian & Andrew Metrick, *Saving for Retirement on the Path of Least Resistance,* (July 19, 2004); *see also* Choi, Laibson & Madrian, *supra* note 1. The potential for lowering of contribution rates will be minimized in plans that provide for automatic escalation of default contribution rates, such as will be required under new tax nondiscrimination safe harbor provisions for ''qualified automatic contribution arrangements,'' added by section 902 of the Pension Protection Act.

Table 3

Long-Term Effect of Proposed Regulation on Annual Pension Income at Age 67 (Expressed at 2005 Levels) – Incidence and Magnitude of Gains and Losses

Career Earnings	With Gain	Mean Gain	With Loss	Mean Loss
Low Impact				
All	9.9%	$2,010	4.5%	$1,120
Q1	5.6%	$1,030	2.5%	$490
Q2	10.0%	$1,630	4.3%	$680
Q3	11.6%	$1,960	5.4%	$1,200
Q4	12.5%	$2,800	5.9%	$1,630
High Impact				
All	13.7%	$2,740	5.9%	$1,460
Q1	7.9%	$1,420	3.3%	$600
Q2	13.6%	$2,250	5.7%	$950
Q3	16.1%	$2,780	7.0%	$1,500
Q4	17.2%	$3,690	7.7%	$2,180

Cost

Plan sponsors may incur some administrative cost in order to meet the conditions of the proposed regulation. The Department generally expects such cost to be low. The annual notice provision can be satisfied by adding information to existing notices and disclosures, such as the Summary Plan Description, the annual investment election form, or by adapting information provided to the plan by the investment manager of a qualified default investment alternative. The requirement to pass through investment material to participants and beneficiaries does not impose extensive costs. These revisions may be no more extensive than those associated with other amendments that plans implement from time to time. The boundaries of the proposed regulation are sufficiently broad to encompass a wide range of readily available and competitively priced investment products and services. It is likely that a large majority of participant directed plans already offer one or more investment options that would fall within the proposed regulation. For these reasons, it is likely that the administrative cost for a plan sponsor to take advantage of the relief afforded by the proposed regulation will be low. The Department invites comments on the administrative cost of this proposed regulation, and suggestions as to how to minimize that cost.

The proposed regulation may indirectly prompt some plan sponsors to shoulder additional costs in terms of increased retirement benefits paid to employees. For example, it is expected that the proposed regulation, by promoting the adoption of automatic enrollment programs, will have the indirect affect of increasing aggregate employer matching contributions by between $700 million and $1.3 billion annually (expressed at 2005 levels). Adverse consequences are not expected because the adoption of automatic enrollment programs and the provision of matching contributions generally are at the discretion of the plan sponsor. Use of the proposed regulation and, therefore, compliance with its provisions are also voluntary on the part of the plan sponsor.

Additional Potential Consequences

The Department anticipates that this proposed regulation will have two major economic consequences. Default investments will be directed toward higher-return instruments boosting average account performance, and automatic enrollment provisions will become more common boosting participation. However, it is possible that the proposed regulation will have additional, indirect consequences, which could affect future retirement income levels. The Department invites public comment on the likelihood and implications of any such consequences, including comments addressing the following questions.

- Will plan sponsors that direct default investments from very low-risk instruments into higher-performing portfolios make other changes to investment options or undertake new efforts to inform or influence participants' investment decisions? Will those plan sponsors that implement automatic enrollment programs change other provisions of their plans as well? For example, might they change matching contribution formulas, eligibility or vesting provisions, loan programs, or distribution policies?
- More than one-half of all participant directed individual account plans recently reported compliance with ERISA section 404(c)(1) and associated regulations. While the fiduciary protections afforded by this proposed regulation for default investments are intended to be similar to those afforded by the regulation under section 404(c)(1) of ERISA for participants' active investment elections, it is possible that some fiduciaries who are covered by the proposed regulation in connection with

default investments will not be covered by the regulation under section 404(c)(1) in connection with participant directed investments out of default investments. If so, how might the proposed regulation's incentives interact with those associated with the existing ERISA section 404(c) regulation, and to what effect?

• Will employees who make additional contributions as a result of new automatic enrollment programs reduce their current consumption or other types of current saving, or some of each? Will they be more or less likely than otherwise similar participants to retain or roll over their accounts, preserving them into retirement?

Changes such as these could either augment or offset the effects of this proposed regulation on retirement saving and pension income. For example, by one estimate, among employees eligible for a 401(k) plan with automatic enrollment and a life cycle fund investment default, moving the default contribution up from 3 percent to 6 percent could increase the median earnings replacement rate from 401(k) savings in each of the four earnings quartiles by between 6 and 10 percentage points.[28]

Cost-Benefit Assessment

The costs and benefits of the proposed regulation are not simple, direct functions of the foregoing gross dollar estimates. For example, increases in retirement savings due to automatic enrollment will be offset by either decreases in current consumption or reductions in other savings. Increases due to higher returns will entail additional risk. Therefore, net benefits will be smaller than the predicted increases in retirement savings. The Department did not attempt to quantify these welfare effects, believing that there is insufficient data on the time preference for consumption and level of risk aversion in the affected population.[29]

The proposed regulation will have distributional consequences, the costs and benefits of which are open to different interpretations. Average increases in pension income will be larger for individuals with higher career earnings, but they will be proportionately larger for those with lower career earnings (see Table 4 below). Moreover, while average pension incomes will rise in each of the four career earnings quarterlies, a small minority of individuals in each quartile could lose some pension income (see Table 3).

The proposed regulation may also have macroeconomic consequences, which are likely to be small but positive. An increase in retirement saving is likely to promote investment and long-term economic productivity and growth. The increase in retirement saving will be very small relative to overall market capitalization, and may be offset in part by reductions in other saving. Therefore macroeconomic benefits are likely to be small.[30]

Based on the foregoing analysis and estimates, the Department is confident that the proposed regulation will increase aggregate retirement savings and pension income substantially. The Department therefore concludes that the benefits of this proposed regulation will exceed its costs by a wide margin, and invites comments on this conclusion.

Table 4

Long-Term Effect of Proposed Regulation on Annual Pension Income at Age 67 (Expressed at 2005 Levels) – Absolute and Proportional Average Increase

Career Earnings	Low impact		High Impact	
	$	%	$	%
All	$150	1.1%	$290	2.1%
Q1	$50	1.8%	$90	3.2%
Q2	$130	1.6%	$250	3.0%
Q3	$160	1.0%	$340	2.1%
Q4	$250	0.9%	$470	1.6%

Basis of Estimates

The Department estimated the effect of the proposed regulation on 401(k) plan participation, contributions, account balances, and investment mix, and its effect on pension incomes at age 67, using a microsimulation model of lifetime pension accumulations for a birth cohort, known as PENSIM.[31] To produce the low and high impact estimates presented here, PENSIM was parameterized and applied as follows.

First, automatic enrollment was assigned randomly to achieve incidences of 25 percent (baseline), 35

[28] Holden & VanDerhei, supra note 1, at 15, Figure 10.

[29] As noted below, peer reviewers raised questions about welfare effects in connection with peer review.

[30] Insofar as the Department expects contributions to increase, the Department expects taxes on income to be correspondingly deferred. The magnitude of this effect would depend on the timing of contributions and withdrawals and the tax rates applicable at those times.

[31] PENSIM was developed for the Department by the Policy Simulation Group as a tool for examining the macroeconomic and distributional implications of private pension trends and policies. Detailed information on PENSIM is available at *http://www.polsim.com/PENSIM.html.* Examples of PENSIM applications include comparisons of retirement income prospects for different generations contained in U.S. Government Accountability Office, Report No. 03–429, *Retirement Income: Intergenerational Comparisons of Wealth and Future Income* (2003) and comparisons of pension income produced by traditional defined benefit pension plans and cash balance pension plans contained in U.S. Government Accountability Office, Report No. 06–42, *Private Pensions: Information on Cash Balance Pension Plans* (2005). As noted below, the choice of PENSIM as the basis for these estimates was questioned in the context of peer review.

percent (low impact) and 45 percent (high impact) of 401(k) plan eligible employees. Next, participation and default participation rates were adjusted to reflect available research findings on these rates at various tenures in the presence and absence of automatic enrollment programs.[32] The default contribution rate was assumed to be 3 percent, which surveys indicate is the most common rate currently in use.[33] The investment of contributions made by default was directed as follows:[34] in the baseline estimates, to U.S. Treasury bonds;[35] in the low- and high-impact estimates, to a mix resembling a life cycle fund, with 100 percent minus the participant's age in equity and the remainder in U.S. Treasury bonds. Returns to equity were determined stochastically. The distribution was lognormal with a nominal mean of 9.48 percent[36] and standard deviation of 16.54 percent.[37]

To estimate the effects of the proposed regulation, the Department compared the baseline estimates with the low- and high-impact estimates. Because the proposed regulation's effects will be cumulative and gradual, estimates were prepared for the 1985 birth cohort, whose working lives would almost entirely follow implementation of the proposed regulation. To estimate participation rates, contributions, account balances and investment mixes, the cohort was sampled at random ages from 21 to 65, and results for individuals participating in 401(k) plans when sampled were aggregated, with all dollar amounts adjusted to 2005 levels. This roughly illustrates a point-in-time snapshot of plans in the future.[38] To estimate effects on pension incomes, account balances available at retirement[39] were converted into lifetime annuities, and pension incomes of cohort members surviving to age 67 were measured and compared.

The estimates are highly uncertain. The long time horizon compounds the uncertainty. One of the greatest uncertainties relates to the default contribution rate, which is assumed to be fixed at 3 percent.[40] Higher initial default contribution rates, or default provisions that increase contribution rates as tenure and/or pay increases, might enlarge the positive effects on pension income and reduce the negative effects. But it is unclear whether plan sponsors will adopt such approaches, or if they do, whether they might make other changes to their plans or whether more eligible employees might decline automatic participation. The Department therefore has no reliable basis for estimating the effects of such changes in automatic enrollment programs.[41] The Department invites comments on this and other areas of uncertainty in its estimates.

Peer Review

The ''Final Information Quality Bulletin for Peer Review'' issued by the Office of Management and Budget on December 16, 2004 (the Bulletin) establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government. Collectively, the PENSIM model, the data and methods underlying it, the surveys and literature used to parameterize it, and the Department's interpretation of these and application of them to produce the estimates presented in this regulatory impact analysis (RIA) constitute a ''highly influential scientific assessment'' under the Bulletin. Therefore, pursuant to the Bulletin, the Department arranged for review of this assessment by three highly qualified independent reviewers. The Department provided each reviewer with instructions for review pursuant to the Bulletin, a draft of the Notice of

[32] These findings were drawn from Choi, Laibson & Madrian, supra note 1. The overall participation rate under automatic enrollment was adjusted upward to 90 percent.

[33] *See, e.g., 2004 Annual 401(k) Benchmarking Survey; supra* note 2, at 6; *see also Survey Findings:* Trends and Experiences in *401(k) Plans, supra* note 2, at 16;'' *see also* 48th *Annual Survey of Profit Sharing/401(k) Plans, supra* note 2, at 36.

[34] These estimates assume complete correspondence between default participation in 401(k) plans and default investing. Participants contributing by default are assumed to invest by default, while those who actively elect to contribute or who are in plans without elective contributions are assumed to actively invest. In practice neither of these assumptions will hold all of the time. Some participants contributing by default may actively direct their investments. Perhaps more important, some active contributors or participants in plans without elective contributions may invest by default—and this proposed regulation may affect the incidence of such default investing. The Department did not attempt to estimate the extent or effect of default investing not associated with default contributing. The Department was unable to locate data on the extent of such default investing, but believes it is likely to be small relative to that of default investing of default contributions. The Department is likewise uncertain how much the proposed regulation might affect the incidence of such default investing, but believes that the economic effects of changes in that incidence will be modest insofar as the asset allocation of the active investments such default investments would replace are likely on average and aggregate to not differ much from the asset allocation of the defaults. The Department also notes that a large majority of the estimated economic effects of the proposed regulation derive from increased contributions rather than increased equity investment, so the omission from the estimates of some default investment effects may have only a modest effect on the total. The Department invites comments on its assumptions and estimates relating to the incidence of default investments.

[35] On the risk return spectrum, Treasury bonds generally fall between money market and stable value funds on one side and balanced and life cycle funds on the other. They serve here as a proxy for the current default investments connected with automatic enrollment programs, which are mostly money market and stable value funds but include a substantial proportion of balanced and life cycle funds.

[36] This is the rate used by the Office of the Actuary, U.S. Social Security Administration, to estimate returns to proposed personal accounts in the Social Security program.

[37] This is parallel to volatility assumed by Vanguard in illustrating the effects of alternative default investments. *See* Utkus, supra note 4, at 17.

[38] Because PENSIM is a birth cohort-based model (rather than a panel-based model that simulates the experience of an entire population from year to year) it does not directly provide point-in-time aggregate estimates for the overall population. These PENSIM-derived estimates serve as a proxy for such panel-derived point-in-time estimates. The PENSIM-based estimates in effect blend the experience of younger workers in the nearer future with that of older workers in the more distant future, producing a sort of longitudinal central tendency. The estimated participation and contribution rates serve as proxies for the average across many future years (reflecting near-immediate, ongoing effects). The estimated account balances serve as proxies for some point in the distant future (reflecting cumulative effects). Actual aggregate participation rates and contribution amounts will vary over time because of changes in certain population variables such as birth rates, age-specific labor force participation rates, and productivity and compensation levels. Any long-term forecasts of such changes are highly uncertain, however. The Department therefore did not attempt to adjust its estimates for such changes, believing such adjustments would be of questionable analytic value. Because the PENSIM-derived contribution estimates blend experience at different points in time and do not represent changes in population contributions over time or the timing of those changes, they do not lend themselves to discounting, conversion to net present values or level annuity equivalents. Rather, they can be interpreted as proxies for level annuity equivalents, albeit proxies which neglect the aforementioned changes in population variables.

[39] Taking into account individuals' propensities to cash out their accounts prior to retirement.

[40] As noted below, other areas of uncertainty, including rates of return, the rate of adoption of automatic enrollment, participation rates under automatic enrollment, and other savings decisions, were raised in connection with peer review.

[41] Nonetheless, to illustrate the potential impact of higher default contribution rates, the Department estimated the effect of the proposed regulation where the default contribution rate in automatic enrollment programs is 5 percent rather than 3 percent. The estimate holds constant other plan characteristics and participants' default rates and elective behaviors. In this scenario, in the very long run the proposed regulation is predicted to increase aggregate 401(k) plan account balances by between 3 percent and 6 percent, or approximately $60 billion and $114 billion if represented at 2005 levels. For individuals born in 1985 and surviving to age 67, holding other factors constant, low-impact estimates suggest that the proposed regulation will increase pension income by an average of $2,200 per year (in 2005 dollars) for 11 percent, and decrease it by $810 per year on average for 4 percent. Pension income would be unchanged for the remaining 85 percent. High-impact estimates suggest that average annual pension income will increase by $2,880 for 15 percent, fall by $1,040 for 5 percent, and be unchanged for 80 percent.

Proposed Rulemaking (NPRM) including a draft RIA, technical documentation of PENSIM and its application in support of the RIA, and detailed tables of related PENSIM estimates. The instructions directed the reviewers to focus on the technical and scientific issues in the assessment rather than the policy proposed in the NPRM. Each reviewer separately reviewed the assessment embodied in these materials and submitted to the Department a peer review report. All of the aforementioned materials are being published together with the Department's written response to the peer reviews on the Department's Web site, concurrent with the publication of this NPRM, at *http://www.dol.gov/ebsa.*

The reviews offer both praise for and criticism of the assessment. They question numerous specific modeling assumptions and identify potential indirect effects that were not estimated. They note that welfare effects (as distinguished from simple dollar impacts on retirement saving), which the Department did not estimate, may be negative if consumers are risk averse or prefer current to future consumption. One review criticizes PENSIM's reduced form modeling approach as lacking the structural, behavioral foundation necessary to predict results and evaluate welfare effects, finds the PENSIM estimates ''unconvincing,'' and concludes that the Department has failed to provide a scientific rationale for the policy initiative contained in the NPRM.

While many of the reviews' criticisms have merit, the Department does not believe that they cast serious doubt on the RIA's primary conclusions: that the proposed rule on net will increase retirement savings and thereby benefit consumers. The Department's written response to the reviews qualifies and tempers some of the RIA's conclusions. It answers, to the extent possible, major questions raised in the reviews, including questions about welfare effects. It defends the Department's reliance on PENSIM as a basis for its estimates and explains why the Department did not estimate net welfare effects but believes such effects to be positive. It also offers a tentative, prioritized plan for conducting sensitivity tests and otherwise refining its assessment and RIA in connection with a possible final rulemaking.

Federalism Statement. Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

For the reasons set forth in the preamble, the Department proposes to amend Chapter XXV, Subchapter F, Part 2550 of Title 29 of the Code of Federal Regulations as follows:

Subchapter F—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; sec. 657, Pub. L. 107–16, 115 Stat. 38; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

2. Add § 2550.404c–5 to read as follows:

§ 2550.404c–5 Fiduciary relief for investments in qualified default investment alternatives.

(a) In general. (1) This section implements the fiduciary relief provided under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), 29 U.S.C. 1001 *et seq.*, under which a participant or beneficiary in an individual account plan will be treated as exercising control over the assets in his or her account for purposes of ERISA section 404(c)(1) with respect to the amount of contributions and earnings that, in the absence of an investment election by the participant, are invested by the plan in accordance with this regulation. If a participant or beneficiary is treated as exercising control over the assets in his or her account in accordance with ERISA section 404(c)(1) no person who is otherwise a fiduciary shall be liable under part 4 of title I of ERISA for any loss or by reason of any breach which results from such participant's or beneficiary's exercise of control. Except as specifically provided in paragraph (c)(6) of this section a plan need not meet the requirements for an ERISA section 404(c) plan under 29 CFR 2550.404c–1 in order for a plan fiduciary to obtain the relief under this section.

(2) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this proposed regulation. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to the investment of assets in the individual account of a participant or beneficiary.

(b) Fiduciary relief. (1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a fiduciary of an individual account plan that permits participants or beneficiaries to direct the investment of assets in their accounts and that meets the conditions of paragraph (c) of this section shall not be liable for any loss, or by reason of any breach under part 4 of title I of ERISA, that is the direct and necessary result of—

(i) Investing all or part of a participant's or beneficiary's account in a qualified default investment alternative, or

(ii) Investment decisions made by the entity described in paragraph (e)(3) of this section in connection with the management of a qualified default investment alternative.

(2) Nothing in this section shall relieve a fiduciary from his or her duties

under part 4 of title I of ERISA to prudently select and monitor any qualified default investment alternative under the plan or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses.

(3) Nothing in this section shall relieve an investment manager described in paragraph (e)(3)(i) from its fiduciary duties under part 4 of title I of ERISA or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses.

(4) Nothing in this section shall provide relief from the prohibited transaction provisions of section 406 of ERISA, or from any liability that results from a violation of those provisions, including liability for any resulting losses.

(c) Conditions. With respect to the investment of assets in the individual account of a participant or beneficiary, a fiduciary shall qualify for the relief described in paragraph (b)(1) of this section if:

(1) Assets are invested in a ''qualified default investment alternative'' within the meaning of paragraph (e) of this section;

(2) The participant or beneficiary on whose behalf the investment is made had the opportunity to direct the investment of the assets in his or her account but did not direct the investment of the assets;

(3) The participant or beneficiary on whose behalf an investment in a qualified default investment alternative may be made is furnished within a reasonable period of time of at least 30 days in advance of the first such investment and within a reasonable period of time of at least 30 days in advance of each subsequent plan year, a summary plan description, summary of material modification, or other notice that meets the requirements of paragraph (d) of this section;

(4) Under the terms of the plan any material provided to the plan relating to a participant's or beneficiary's investment in a qualified default investment alternative (e.g., account statements, prospectuses, proxy voting material) will be provided to the participant or beneficiary;

(5) Any participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative may, consistent with the terms of the plan (but in no event less frequently than once within any three month period), transfer, in whole or in part, such assets to any other investment alternative available under the plan without financial penalty; and

(6) The plan offers a ''broad range of investment alternatives'' within the meaning of 29 CFR 2550.404c—1(b)(3).

(d) Notice. The notice required by paragraph (c)(3) of this section shall be written in a manner calculated to be understood by the average plan participant and contain the following:

(1) A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant and beneficiary in a qualified default investment alternative;

(2) A description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative;

(3) A description of the right of the participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative to direct the investment of those assets to any other investment alternative under the plan, without financial penalty; and

(4) An explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

(e) Qualified default investment alternative. For purposes of this section, a qualified default investment alternative means an investment alternative that:

(1)(i) Does not hold or permit the acquisition of employer securities, except as provided in paragraph (e)(1)(ii) of this section.

(ii) Paragraph (e)(1)(i) of this section shall not apply to:

(A) Employer securities held or acquired by an investment company registered under the Investment Company Act of 1940 or a similar pooled investment vehicle regulated and subject to periodic examination by a State or Federal agency and with respect to which investment in such securities is made in accordance with the stated investment objectives of the investment vehicle and independent of the plan sponsor or an affiliate thereof; or

(B) With respect to a qualified default investment alternative described in paragraph (e)(5)(iii) of this section, employer securities acquired as a matching contribution from the employer/plan sponsor, or employer securities acquired prior to management by the investment management service;

(2) Except as otherwise provided in paragraph (c)(5) of this section, does not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer, in whole or in part, his or her investment from the qualified default investment alternative to any other investment alternative available under the plan;

(3) Is:

(i) Managed by an investment manager, as defined in section 3(38) of the Act, or

(ii) An investment company registered under the Investment Company Act of 1940;

(4) Is diversified so as to minimize the risk of large losses; and

(5) Constitutes one of the following:

(i) An investment fund product or model portfolio that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(5)(i), asset allocation decisions for such products and portfolios are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''life-cycle'' or ''targeted-retirement-date'' fund or account.

(ii) An investment fund product or model portfolio that is designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole. For purposes of this paragraph (e)(5)(ii), asset allocation decisions for such products and portfolios are not required to take into account the age, risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''balanced'' fund.

(iii) An investment management service with respect to which an investment manager allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such portfolios change their asset allocations and associated

risk levels for an individual account over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(5)(iii), asset allocation decisions are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a service may be a ''managed account.''

Signed at Washington, DC, this 22nd day of September.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 06–8282 Filed 9–26–06; 8:45 am]

BILLING CODE 4510–29–P

Federal Register

Wednesday,
September 27, 2006

Part VII

Department of Housing and Urban Development

No FEAR Act; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR–5101–N–01]

No FEAR Act Notice

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: HUD is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under the Federal antidiscrimination laws and whistleblower protection laws. This notice fulfills HUD's notification obligations under the Notification and Federal Employees Antidiscrimination Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations.

FOR FURTHER INFORMATION CONTACT: Linda Bradford-Washington, Deputy Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2134, Washington, DC 20410, telephone (202) 708–3362 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act (the Act). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary) In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' (Public Law 107–174, Title I, General Provisions, section 101(1))

The Act also requires the Department to inform Federal employees, former Federal employees, and applicants for Federal employment of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the Department. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative, you may be eligible to pursue a discrimination complaint by filing a grievance through the Department's administrative or negotiated grievance procedures.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because the Federal employee with authority reasonably believes disclosure of information by that employee or applicant would violate Federal law, rule, or regulation; would uncover gross mismanagement, a gross waste of funds, or an abuse of authority; or create a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site, *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity and want to pursue any legal remedy, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections of this notice or, if applicable, the Department's administrative or negotiated grievance procedures.

Disciplinary Actions

Under the existing laws, each Federal department and agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the OSC to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits a department or agency to take unfounded disciplinary action against a Federal employee or former employee, or to violate the procedural rights of a Federal employee or former employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as HUD's Office of Departmental Equal Employment Opportunity. Additional information regarding Federal antidiscrimination and whistleblower protection laws can be found at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: September 18, 2006.

Linda Bradford-Washington,

Deputy Director for the Office of Departmental Equal Employment Opportunity.

[FR Doc. E6–15770 Filed 9–26–06; 8:45 am]

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Federal Register

Wednesday,
September 27, 2006

Part VIII

Department of Labor

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program (UC); Confidentiality and Disclosure of State UC Information; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

RIN 1205–AB18

Federal-State Unemployment Compensation Program (UC); Confidentiality and Disclosure of State UC Information

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is issuing this final rule to set forth the statutory confidentiality and disclosure requirements of Title III of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) concerning unemployment compensation (UC) information. The final rule also amends the Income and Eligibility Verification System (IEVS) regulations, a system of required information sharing primarily among State and local agencies administering several federally assisted programs.

DATES: *Effective Date:* This final rule is effective October 27, 2006.

Applicability Date: States that need to amend their laws, rules, procedures, or existing agreements in order to conform and comply with the requirements of this rule have two years from the effective date of the final rule to do so.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Chief, Division of Legislation, Office of Workforce Security, Employment and Training Administration, (202) 693–3038 (this is not a toll-free number) or 1–877–889–5627 (TTY), or by e-mail at *hildebrand.gerard@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background

The first Notice of Proposed Rulemaking concerning confidentiality and disclosure of State UC information was issued in 1992. (57 FR 10063 (March 23, 1992).) Given the time that elapsed following this 1992 NPRM, the Department published a new NPRM on August 12, 2004. (69 FR 50022.) Comments were invited through October 12, 2004.

General Discussion of Final Rule

This final rule implements Federal UC laws concerning confidentiality and disclosure of UC information and establishes uniform minimum requirements for the payment of costs, safeguards, and data-sharing agreements to ensure responsible use when UC information is disclosed. The confidentiality requirement implemented by this rule is derived from the ''methods of administration'' requirement of Section 303(a)(1), SSA. The disclosure requirements are from Sections 303(a)(7), (c)(1), (d), (e), (f), (h), and (i), SSA, and Section 3304(a)(16), FUTA. This rule revises the regulations at 20 CFR Part 603, to implement all of these statutory provisions. (The present rule at Part 603, which this final rule replaces, addresses only Section 303(f), SSA (concerning IEVS)). These statutory provisions each address disclosure to governmental entities, but they vary with respect to the specific information to be disclosed and the terms and conditions of disclosure.

The confidentiality and disclosure requirements in Title III of the SSA relating to UC information are conditions for receipt of grants by the States for UC administration. The disclosure requirements in the FUTA are conditions required of a State in order for employers in that State to receive credit against the Federal unemployment tax under 26 U.S.C. 3302.

Other Federal laws may require use or disclosure of confidential UC information. For example, the Workforce Investment Act (WIA) of 1998, Public Law 105–220, requires States to measure their progress in providing services funded under Title I of the WIA against State and local performance measures using ''quarterly wage records, consistent with State law.'' 29 U.S.C. 2871(f)(2); 20 CFR 666.150(a). Because these laws do not condition receipt of UC grants under the SSA or certification for employer tax credits under the FUTA on such use or disclosure, the rule does not implement these laws. However, the disclosure of confidential UC information in compliance with the WIA and other Federal laws is permitted under the general exceptions to confidentiality in § 603.5 of this final rule. (For more information on the requirement to use wage records under the WIA, see 20 CFR 666.150.) The Department stated previously and repeats here that it strongly encourages States to amend their laws to permit disclosure for WIA purposes if their State laws do not already provide for such disclosure.

Comments Received on the NPRM

The Department received 38 pieces of correspondence commenting on the NPRM by the close of the comment period. The majority of the comments—24—were from State UC agencies. Eight commenters—all State UC agencies—objected to the rule. The remaining 16 State UC agencies appeared neutral, or even supported the objectives of the rule, while offering technical comments. Other commenters included employer interest groups, researchers, the U.S. Census Bureau, and the National Association of State Workforce Agencies. All timely comments were considered and are included in the rulemaking record. Several comments were not germane to this rulemaking and, therefore, are not addressed.

Discussion of Comments—General

Rule not necessary. Several commenters stated that the rule was not necessary because the UC program has functioned for 60 years without such a rule and there was no evidence of a problem that would be rectified by a Federal rule, which one commenter said was an ''overreaction'' to any abuses that may have occurred.

While the Department appreciates that States have long protected certain UC information, the rule is necessary to comply with statutory mandates in the SSA. The SSA provides that the Department establish safeguards ''in regulations'' to insure that information required to be disclosed to certain governmental entities is used only for the purposes for which it is disclosed. Sections 303(d)(1)(B), (e)(1)(B), and (i)(1)(B), SSA. Section 303(h)(1)(C), SSA, also provides that the Department establish ''safeguards'' although it does not explicitly refer to regulations. Applying the regulation to *all* disclosed UC information will result in more uniform treatment among entities and, thereby, a certain degree of simplicity.

Moreover, absent this regulation, information that is highly protected when collected for other Federal purposes (for example, Social Security and Federal income tax) would lack explicit protection under Federal laws and regulations when it is collected for purposes of the Federal-State UC program. Indeed, much of the demand for use of UC information for non-UC purposes exists because information collected for the UC program is currently subject to less stringent legal protections, although it is no less sensitive. That demand has been increasing as technology makes data sharing easier and as UC information is used for program evaluations. Thus, while the Department believes that a considerable degree of State flexibility should exist with regard to confidentiality and that data should be shared under certain circumstances, we do not believe it is appropriate to be passive in this matter, particularly in a

climate of heightened concern regarding identity theft.

Requirements of the Rule. Several comments indicated confusion concerning the requirements of the rule. For example, some commenters viewed the rule as requiring that certain records must be open to the public or requiring certain disclosures that are merely optional on the part of the States.

In response, we note that the rule has two distinct aspects. First, it sets minimum requirements concerning what UC information must be kept confidential and for the payment of costs, safeguards, and data-sharing agreements. Nothing prohibits States from having more stringent confidentiality provisions than those imposed by the rule, except for certain required disclosures (discussed in the next paragraph). For example, States may keep appellate records confidential even though the rule does not require it.

Second, the rule implements certain provisions of Federal law requiring that certain UC information must be disclosed to certain governmental entities. For example, Section 303(e)(1), SSA, requires States to disclose information to State child support agencies for purposes of establishing certain child support obligations. These required disclosure provisions address what information must be disclosed to the relevant governmental entities. However, we note that the rule also permits, at State option, disclosure to public officials in the performance of their duties. As a result, the rule does not prohibit the State from disclosing more information to a governmental entity than is required under Federal UC law, provided such disclosures otherwise meet the conditions of the rule (such as payment of costs).

Also, several State UC agencies requested more specificity regarding the regulation's application in certain areas or the meaning of certain words. While these comments have resulted in certain clarifications (discussed in the Summary of Comments), in other cases no change to the rule resulted. In keeping with the principle that the rule establishes minimum requirements, the Department has chosen to leave many specific details of implementation to the States. For example, although the rule requires that penalties be assessed under State law for unlawful disclosure of confidential UC information, it does not specify what these penalties must be. Similarly, although the rule addresses disposition of confidential UC information when it is disclosed to governmental agencies or private entities, the Department, consistent with its long-established practice, has chosen not to regulate State court practices involving the UC program. States are, therefore, free to address disposition by their courts as they see fit. In addition, the Department does not believe it is necessary to define certain commonly used terms (such as ''audit''), as one commenter requested.

Finally, several commenters expressed concerns about the limited scope of the mandatory disclosure provisions. For example, one commenter noted that the disclosure provision in § 603.6(b)(3) required disclosure of certain information to ''officers and employees of any State food stamp agency,'' but not to ''county social service agencies [that] carry out Food Stamp eligibility determinations under the policy direction of the State Food Stamp agency.'' In this case, the rule reflects Federal law, which requires disclosure only to ''any State food stamp agency.'' (See Section 303(d)(1)(A), SSA.) However, nothing prohibits disclosure to public officials employed by a county when such disclosure is for use in the performance of a public official's duties and is otherwise consistent with the rule. (See § 603.5(e))

Effect of Rule. One commenter expressed concern that any rule should ''(1) encourage uniform procedures among the States, preferably by including a model State law in the rulemaking, and (2) avoid unnecessary State legislation.'' That commenter was also concerned about why a ''State law'' needed to specifically address disclosure of ''an individual's information to that individual, or an employer's information to that employer.'' In a similar vein, another commenter stated that the definition of ''State law'' should be expanded to include ''an administrative rule, written policy or administrative interpretation,'' thereby avoiding State legislation.

The Department does not believe model legislation is necessary or desirable. All State UC laws currently contain confidentiality provisions, which have been interpreted over the years through regulations, court cases, and administrative rulings. State UC agencies are aware of these interpretations, which will influence their implementation of the regulation's requirements, including their determination of whether amendments to the State code, rules, or procedures are necessary to specifically address the requirements of the regulation.

The Department considers regulations and administrative rulings to be part of the ''State UC law'' for purposes of conformity with Federal law. Since these regulations and rulings are treated as law, the Department does not believe there is need to change the definition of ''State law.''

One commenter expressed the concern that the rule would lead to a ''lack of uniformity'' among States. Other commenters believed that the rule would undermine State laws that are currently more restrictive than the rule. The Department believes that the rule will result in greater, rather than less, uniformity among States because it requires some States to raise their confidentiality requirements to meet the minimum requirements of this rule. The Department appreciates that States have valid reasons for maintaining UC confidentiality laws that are stricter than those required by the rule. On balance, we believe that the rule will serve to enhance confidentiality requirements by making disclosure subject to the minimum requirements of the rule, while permitting States to provide additional protections.

Rule would increase costs and burdens. Several State UC agencies objected to the rule on the grounds that it would result in substantial new costs, would be excessively burdensome, or would be a distraction to program administration.

The rule is, to the extent possible, written to minimize the burden on the States, recognize existing State practices, and permit implementation within existing resource levels. Our analysis of the objections regarding costs and burdens indicate that most were based on misunderstanding of the requirements of the rule. Notably, some commenters read the rule to require formal agreements before disclosure may be made to an individual's agent, and some commenters objected to the requirement that States ''periodically audit'' every entity receiving UC information, including the individual's agent. (See §§ 603.10(b)(2) and 603.9(b)(2), respectively.) However, both of these requirements pertained only to ongoing disclosures made to a third party (other than an agent), who typically requests many individuals to authorize the disclosure of information to them. (For example, mortgage lenders once routinely asked applicants to authorize disclosure of their confidential UC information.) Also, these types of ongoing disclosures are entirely optional on the part of the State.

Similarly, some commenters read the rule to require States to charge for the costs associated with disclosing an individual's information to that individual or an agent, and stated that the administrative costs of establishing such a collection system would be burdensome. However, such a collection system would only be necessary where

the disclosure of information is for non-UC purposes and where the associated costs for the disclosure are not nominal (as determined on a case-by-case basis) and which, therefore, must be reimbursed. (See § 603.8(b).) While nominal costs need not be reimbursed under this final rule, the State or State UC agency is not precluded from charging for the costs of such disclosures.

Another notable area concerning burden was that some commenters read the notification provisions of § 603.11 (pertaining to claimants and employers) to require far greater effort than they actually require. The content of the notice to claimants and employers need not be complex or lengthy, and need not specify all potential uses of confidential UC information. The notice may simply state that confidential UC information will be used for other governmental purposes, including verifying an individual's eligibility for other governmental programs. Because the current rule at § 603.4 already requires notice to claimants that information will be used for IEVS purposes, the Department does not believe that the new notification requirements materially increase the burden on States.

As a result of these comments, the final rule has been edited for clarity. Specific clarifications are discussed in the Summary of Comments. Also discussed in the Summary of Comments are revisions to the provisions requiring a motion to quash subpoenas to recognize that States may have more informal, less costly means of prevailing against subpoenas without actually filing a motion to quash. (See discussion of § 603.7(a).)

Some commenters were concerned that the rule would be ''an unfunded mandate'' on State UC agencies or on requesting entities. One commenter disagreed with our determination that the rule was not ''economically significant'' because of the costs that recipients of UC data would incur under the rule. In response, the Department notes that the final rule—like the proposed rule—requires that costs of providing UC information for non-UC purposes must be paid by the requesting entity. The final rule further provides that such costs may be paid, if applicable, by another source paying on behalf of the recipient. Thus, with regard to UC agencies, which this rule regulates, it will not create an unfunded mandate.

The sharing of UC information for non-UC purposes has never been a permissible cost of administering the State's UC law. (Specifically, Section 302(a), SSA, permits the Secretary to certify as payable to States only amounts ''necessary for the proper and efficient administration of'' the State's UC law. Further, Section 303(a)(8), SSA, limits the use of the State's UC grant to the ''proper and efficient administration of'' the State's UC law.) State UC agencies should already be charging for all costs associated with disclosures that incur more than incidental costs. Thus, on this point, the rule merely reflects current law. For this reason, we do not believe the rule is ''economically significant'' because, based on the information available to the Department, almost all States already charge recipients for the costs of disclosure.

Confidentiality Principles. Two commenters raised questions concerning the confidentiality principles that were contained in the preamble of the proposed rule.

One commenter noted that, although one fair information principle provided that subjects of an information collection ''should have the right to access and amend information about them,'' the rule itself did not specifically address the right to amend. The commenter expressed concern that, if amendment of the wage record were required, this would create new costs and questioned whether these costs would be payable through UC grant funds.

This commenter is correct that the right to amend is not explicitly addressed in the rule. As a result, States are left to decide when allegations of erroneous wage records would be investigated and when amendment would occur. Because most wage records are purged without ever being used for UC purposes, it is unnecessary to attempt to correct every alleged erroneous wage record. Further, correcting wage records might impose a substantial, but unnecessary, burden on the State. For example, prior to correcting a wage record, an audit may be needed to resolve an individual's allegation that an employer failed to report wages, or whether the individual was properly classified as an independent contractor, in which case no wages would be reportable. States may use such assertions in targeting employers for UC audits, which may be paid from UC grants. However, if such corrections do not in any way serve the administration of the UC program (such as correcting a wage record that is no longer in the State's base period and that does not affect taxes owed by the employer), the costs of these corrections may not be paid from grant funds because they are not necessary for the proper and efficient administration of the UC program. Therefore, under the rule, the State is not required to make such corrections.

The Department's expectation is that wage records will be corrected as necessary in the course of the routine administration of the State's UC law. This usually occurs during the claims determination process or in the process of determining if the worker's services were performed in covered employment.

Another commenter stated it would be helpful to ''provide further illumination of these fair information principles because it would be helpful for State agencies in explaining the rationale behind the federal rule.'' The Department believes sufficient explanation of these principles in terms of the UC program and the rationale for promulgating this rule were provided in the preamble to the proposed rule.

Timeframe for Compliance with Rule. Several commenters asked questions concerning the effective date of the rule. The rule is effective 30 days after publication and States should make reasonable efforts to implement its requirements by that date, especially in cases where the rule involves only minor changes to State procedures. However, the Department recognizes that States may need additional time to changes laws, rules, procedures, or existing agreements. As such, States will be given two years from the effective date of this rule to conform and comply with its requirements, as provided in the ''Applicability Date'' section of this preamble.

Use of Social Security Account Numbers for UC Purposes. One commenter, representing employer interests, encouraged the Department ''to require all State UC agencies to use the [social security account number] as the sole UC claim record identifier'' or, alternatively, to create a ''uniform record identifier, which attaches to an existing [social security account number] after the filing of a claim.'' Essentially, this comment reflected concerns that employers may not be able to identify claimants, and therefore participate in the UC eligibility process, if the social security account number is not used.

The Department appreciates this concern. However, the Department believes this comment is beyond the scope of this rulemaking, which sets minimum requirements for States in preserving the confidentiality of UC information. Instead, the Department is addressing this commenter's concern by working with the States to assure that employer participation in the UC program is not impinged. The

Department issued Unemployment Insurance Program Letter (UIPL) 21–05 to raise awareness of this concern.

Comments that are not addressed in the above general discussion are discussed below in the Summary of Comments. Also discussed below are any substantive changes made to the rule, stemming primarily from the comments received. Non-substantive changes are not discussed. The following Summary is organized sequentially by section heading.

Summary of Comments

To efficiently respond to public comments and explain changes to the rule resulting, in large part, from those comments, only the pertinent portions of the rule are discussed below. The basic format of the below summary of comments begins with a review of the proposed rule provision, followed by a discussion of the public comments, and concludes with what, if any, resulting changes are reflected in the final rule.

Section 603.2 What definitions apply to this part?

(c) Public Domain Information

The proposed rule included appeals records and decisions, and precedential determinations on coverage or employers, employment, and wages within the definition of public domain. The inclusion of these records within this definition was intended to afford States discretion in choosing whether to permit the disclosure of such information, since the proposed rule would not have required that information in the public domain be kept confidential.

However, several commenters expressed concern about treating appeals records and decisions as public domain information. They apparently interpreted the treatment of appeals records and decisions as being in the ''public domain'' to imply that the public had a right to such decisions. To establish that this is not the case, and to insure that some appeals information such as social security account numbers remain confidential, appeals records and decisions have been removed from the definition of public domain information in the final rule.

Appeals records and decisions, as well as precedential determinations on coverage of employers, employment, and wages (which often are appellate decisions), are now treated in the final rule under § 603.5(b) as exceptions to the confidentiality requirement. This means that a State may, but need not, disclose this information. These matters are addressed more fully in the discussion relating to § 603.5(b).

(d) Public Official

The proposed rule limited disclosures for legislators (elected officials) to those who need confidential UC information for ''oversight'' purposes. Commenters expressed concern that this standard, as it related to elected officials, was vague and that, as a result, it would be difficult to implement and difficult to determine whether a particular elected official was performing ''oversight'' functions. In response to these comments, the Department has omitted the reference to ''oversight'' in the definition of ''public official'' in the final rule.

Some commenters also expressed concern that the proposed rule would impinge upon an elected official's need and ability to address constituent inquiries concerning a UC matter. However, the proposed rule would have permitted an elected official performing constituent services to obtain confidential UC information because the elected official is acting as the agent of the constituent who requested the elected official's assistance. The final rule clarifies this treatment of elected officials and this clarification is further discussed in § 603.5(d)(1) (pertaining to agents).

Section 603.4 What is the confidentiality requirement of Section 303(a)(1) of the SSA?

(b) Interpretation

The proposed rule set forth the Department's interpretation of Section 303(a)(1), SSA, as including a basic requirement of confidentiality. It explained that States are required to maintain the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and to bar the disclosure of such information, except as provided in the rule.

Moreover, the proposed rule explained that the confidentiality requirement has its origin in the beginning of the program and is derived from Section 303(a)(1), SSA. Section 303(a)(1), SSA, requires States to provide in their laws, as a condition of administrative grants, for such ''methods of administration'' as the Secretary determines are ''reasonably calculated to insure full payment of unemployment compensation when due.'' From the early years of the program this provision has been interpreted to require the confidentiality of information collected from individuals and employers for UC program administration. Confidentiality is necessary to avoid deterring individuals from claiming benefits or exercising their rights, to encourage employers to provide information necessary for program operations, to avoid interference with the administration of the UC program, and to avoid notoriety for the program if program information were misused.

Two commenters, while generally agreeing that UC information should be kept confidential, objected to using the ''methods of administration'' requirement of Section 303(a)(1), SSA, as a statutory basis for the rule. One noted that this section's language does not ''lead to the conclusion that confidentiality is required by federal law.'' While the Department agrees that this section of the law contains no explicit reference to confidentiality, it does give the Secretary the authority to determine what ''methods of administration'' are necessary. For the reasons explained above, the Department has long interpreted Section 303(a)(1), SSA, to require confidentiality of certain UC information as a ''method of administration * * * reasonably calculated to insure full payment of unemployment compensation when due.'' Also, Congress has several times directed the Department to establish safeguards ''in regulations'' to insure that certain information is used only for the purposes for which it is disclosed. Since it makes no sense to require States to assure the continued confidentiality of disclosed information if that information is not, in the first place, considered confidential, the Department believes Congress recognized a longstanding Federal requirement that UC information be confidential. Section 303(a)(1), SSA, is the source of that requirement. No change to the final rule resulted from the above comments.

Two other commenters asserted that Section 906, SSA, which relates to the Secretary establishing a program of research for the UC system, should be used as a statutory basis for the rule. While some research conducted under Section 906 may result in the Secretary (or her agents) obtaining confidential UC information from the States, it does not in any way place any requirements on the States. Therefore, the Department has not added Section 906 to the statutory authority.

Section 603.5 What are the exceptions to the confidentiality requirement?

This section of the proposed rule sets forth the permissible exceptions to the confidentiality requirement. Only those paragraphs for which comments were received are discussed below.

(a) Public Domain Information

The confidentiality requirement does not apply to information in the public domain, as defined in § 603.2(c). This means the determination of whether and how much information is open to the public or is kept confidential is left to the State.

Some UC information, such as employer names and addresses, is public in the sense that it is available from other public sources like telephone directories, but it is not public domain information for the purposes of this final rule and, therefore, must be kept confidential by the State or State UC agency because it is collected from employers expressly for purposes of administering the UC program. Since the scope of this final rule applies to State and State UC agencies, it does not attempt to restrict access to information that may be available from other public resources.

As noted previously and detailed below, the final rule differs from the proposed rule in that ''appeals records and decisions'' are no longer listed as being public domain information, although ''precedential decisions on benefit eligibility'' would be public domain information, as are any other precedential decision. Appeals records and decisions are now treated under paragraph (b) of § 603.5.

(b) UC Appeals Records (''Administration of the UC Program'' in the Proposed Rule)

In the proposed rule, paragraph (b) of § 603.5 addressed the inapplicability of the confidentiality requirement when disclosure was necessary for the proper administration of the UC program. However, paragraph (a) of § 603.6 of the proposed rule also required the disclosure of confidential UC information necessary for the proper administration of the UC program. Because the rule requires this disclosure, the Department determined that the exception at paragraph (b) of § 603.5 relating to ''administration of the UC program'' was repetitive and unnecessary. As a result, proposed paragraph (b) of § 603.5 has been deleted from the final rule and replaced with the new paragraph on ''UC appeals records''.

This new paragraph on UC appeals records was developed to minimize the confusion on the part of commenters, caused by its original placement within the definition of ''public domain.'' In the proposed rule, appeals records were treated as being excluded from the confidentiality requirements because they were identified as ''public domain'' information. Because some commenters took this to mean that appeals records *must* be in the public domain, the Department has placed ''UC appeals records'' in paragraph (b) as an exception to the confidentiality requirement. Thus it should be clear that a State may, but need not, disclose these records.

Two commenters argued that hearing records and appeals decisions should be closed to the public. One commenter noted that employers may have to disclose ''trade secrets such as customer lists, cost and price data, sales forecasts, and financial reports during [the] proceeding.'' This commenter noted that parties may also have to ''submit information that may be embarrassing, such as drug test results, or inflammatory, such as allegations of sexual harassment'' and that ''a critical element of a case may require disclosure of information that would be protected by law in other contexts, such as personal medical information.''

Although the Department recognizes that these are strong arguments for closing appeals hearings and keeping all appeals records confidential, there are also arguments for open hearings and records. The Department has historically held that the public interest in proper administration of the UC program, specifically in payments of benefits only to eligible individuals, and in open governmental adjudicatory proceedings is served by open hearings and hearing records. Further, public access to hearings ensures fair treatment by the appeals tribunal. Thus, in recognition of these competing views, the Department continues to believe that any determination of whether to close appellate hearings and keep records confidential should be left to the States. As a result, the final rule maintains the position that appeals records and decisions are not subject to the confidentiality requirement.

One commenter addressed the issue of redacting information that may identify the individual or claimant. The Department agrees that social security account numbers should be redacted from appeals records and decisions before they may be made available to the public. Identity theft related to misuse of social security account numbers is a growing concern, and, as a result, an individual may be reluctant to pursue an appeal if it results in his or her social security account number becoming publicly available. While the Department does not believe redaction of an individual or employer's name is necessary, the final rule does not prohibit States from redacting more information than is required to be kept confidential. Indeed, we recognize that redaction of such information already occurs in some States and may be mandated by both the State's UC law and other State confidentiality statutes. Recognizing this, the final rule provides that disclosure of appeals records and decisions, including precedential decisions, is conditioned upon the above redactions as consistent with applicable laws.

As a result of these comments, the final rule has been revised to provide that appeals records and decisions are excluded from the confidentiality requirement as are precedential determinations on coverage of employers, employment, and wages (which usually are appellate decisions). The final rule also conditions disclosure of these records upon the redaction of social security account numbers, provided that such disclosure is otherwise consistent with Federal and State law.

(d) Informed Consent

The proposed rule provided for disclosure of confidential UC information on the basis of informed consent to an ''agent or attorney'' of the individual or employer about whom the information pertains and to ''third parties.'' Under both informed consent provisions, a written release from the individual or employer was required; however, additional conditions were placed upon disclosures to ''third parties'' because of the greater potential for misuse of the information. The ''third parties'' provision was intended to capture those requests for confidential UC information that occur on an ongoing basis (such as an income verification service for lenders), not requests wherein the entity is acting as an agent, that is, someone who is working on behalf of the individual or employer (such as an attorney representing an individual or employer in the litigation of a UC claim). This distinction was not clear to commenters and led to confusion as to the intent and actual requirements of each provision.

As a result of comments, the Department has made several changes in paragraph (d) in the final rule. The paragraph has been restructured to eliminate confusion regarding the requirements of each provision (including the requirements associated with written releases). Further, we re-

titled paragraph (d)(2) and we clarified that it applies to instances where an entity is not acting as an agent and to instances where disclosure is made on an ongoing basis. Specific changes relating to the each provision are addressed below following a discussion of the comments that led to those changes.

As a general note, the Department emphasizes that this provision imposes *minimum* requirements on disclosure. The final rule does not require States to disclose information under this exception. Also, if a State authorizes disclosure based on informed consent, the final rule does not prohibit States from placing additional restrictions on such disclosures.

Paragraph (d)(1)—Agent (''Agent or Attorney'' in the Proposed Rule)

The title of paragraph (d)(1) was changed from ''Agent or attorney'' in the proposed rule to ''Agent'' in the final rule with explanation provided as to the meaning of ''agent,'' which would include an attorney. These changes resulted from confusion expressed by commenters and to better distinguish between paragraph (d)(1) and paragraph (d)(2) (discussed below) and their differing requirements. It was and still is intended that disclosures under paragraph (d)(1) will generally be one-time only events in terms of both the individual (or employer) requesting the disclosure and the agent receiving the information.

Two commenters requested explanation of the term ''agent.'' Under common usage, the term ''agent'' describes one who acts for or in the place of an individual or employer by the authority of that individual or employer. In response to such comments, paragraph (d)(1) of the final rule has been changed to include this description of ''agent.''

Several commenters expressed concern that the proposed rule did not permit disclosure to elected officials performing constituent services. (This was discussed above under § 603.2 regarding disclosure to public officials.) The Department disagrees. When an elected official is acting in response to a constituent's inquiry about a UC matter, such as the individual's UC claim, the elected official is acting on the individual's behalf and, therefore, is effectively the individual's agent in resolving issues related to the claim. This general principle of acting on behalf of an individual (or employer) may apply to other situations, such as a governor's ombudsman acting on the individual's (or employer's) behalf. We do not believe it practical to attempt to list all possible applications of this principle in the final rule. However, to eliminate the confusion regarding constituent services, the final rule now explicitly acknowledges that an elected official performing constituent services is acting as an agent of the constituent.

The following discussion pertains to comments on the proposed written release requirements associated with disclosures to an agent under paragraph (d)(1).

Some commenters noted that many States have established ''electronic'' relationships with claimants and employers and questioned whether the requirement for ''written releases'' would mean that States could not do business electronically. In response to such comments, paragraph (d)(1) of the final rule was revised to permit a State to disclose confidential UC information based on an electronically submitted release, if the State determines that the release is authentic. The final rule does not prescribe requirements for determining if a written (including electronic) release is authentic. Rather, such a determination would depend upon the State's own practices and whether the State has established such ''electronic relationships''.

Another commenter pointed out that elected officials may receive requests for assistance that do not specifically authorize the disclosure of confidential UC information, even though such disclosure is necessary for the official to adequately respond to the constituent. In response, the final rule has been revised by adding language in paragraph (d)(1) that permits the elected official to present reasonable evidence of a request for assistance, such as a letter from the individual or employer requesting assistance or a written record of a telephone request from the individual or employer rather than being required to present the ''written release'' described in the proposed rule. It is the Department's experience that, in most cases, a U.S. Congressman's request for the Department's assistance in reviewing a particular claim includes such reasonable evidence and, as a result, it is unnecessary to request further evidence from the Congressman.

One commenter argued that an attorney's legal and ethical obligations would sufficiently protect the party about whom information is requested without the need for written releases. While the Department recognizes these obligations, we are not convinced that an attorney should in all cases automatically be given any information regarding a client without the client's knowledge, which is evinced through a written release. However, the Department agrees that an attorney's assertion that he or she has been retained to represent an individual or employer *on a UC matter* is sufficient to authorize the disclosure of confidential UC information to the attorney. As in the above case of disclosure to an elected official performing constituent services, when the individual or employer retains an attorney for UC purposes, the expectation is that the attorney will have access to the confidential UC information necessary to act on behalf of the individual or employer. As a result, paragraph (d)(1) of the final rule has been revised to permit disclosure when the attorney asserts that he or she has been retained to represent the individual or employer on a UC matter.

Paragraph (d)(2)—Third Party (Other Than an Agent) or Disclosures Made on an Ongoing Basis (''Third Party'' in the Proposed Rule)

As mentioned previously, the title of paragraph (d)(2) was changed from ''Third party'' in the proposed rule to ''Third party (other than an agent) or disclosures made on an ongoing basis'' in the final rule in an effort to better distinguish it from paragraph (d)(1).

The purpose behind this provision is to permit disclosure of confidential UC information, under certain conditions, to third parties who are not acting as the agent of the individual or employer and to third parties who may reasonably be expected to obtain confidential UC information on an ongoing basis. These often include situations where an entity requests or encourages an individual to permit the disclosure of confidential UC information through signing a release form. One such example is the disclosure of wage records to a third party for purposes of determining if an individual qualifies for a mortgage. Such a practice, when routinely followed, may result in the entity compiling considerable information pertaining to individuals. (The Department notes that, if the third party entity is a governmental entity, then the governmental entity may be able to obtain information under paragraph (e), permitting disclosure to public officials for use in the performance of his or her official duties, without such a written release.)

As explained in the proposed rule, the Department believes that additional protections, including additional conditions attached to the written release, are necessary for these types of third party disclosures because of the greater potential threat to employer or individual privacy posed by the entity's collection, storage, maintenance, use,

and possible misuse of confidential UC information. (This question was dealt with in Unemployment Insurance Program Letter 23–96 (''Disclosure of Confidential Employment information to Private Entities,'' 61 FR 28236), which is superseded by this final rule.) The purpose specified in the release must be limited to providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release, or carrying out administration or evaluation of a public program to which the release pertains. If the release does not meet these requirements, the State may not disclose confidential UC information. It is expected that the entity requesting information on an ongoing basis would create a standard release form, approved by the State agency, that would meet all these requirements. States are expected to use their judgment in confirming whether a release provides a service or benefit to the individual.

Additional requirements are payment of costs, safeguards, and agreements, as provided in §§ 603.8 through 603.10. Also, the States are required by §§ 603.9 and 603.10 to impose certain penalties for the misuse of data and to maintain systems sufficient to allow an audit of disclosed information, among other things.

One commenter argued that the rule should permit sharing information for purposes of evaluating education and training programs established under State law. The commenter stated that ''States should also be allowed to share data on an interagency basis where the same level of confidentiality protections are in place within the State'' without requiring ''informed consent.'' The Department agrees and notes that the rule already provides for the type of data-sharing addressed in the comment. Where sharing occurs with another governmental entity for purposes of administering a law, disclosure of confidential UC information is permitted under paragraph (e) (discussed below) without any ''informed consent'' on the part of the individual. Further, under this rule, administering a law includes conducting research with respect to whatever program(s) are administered under the law. This is discussed in paragraph (e) (exception pertaining to disclosures to ''public officials'') since it relates directly to that exception and serves to clarify an element of that provision. No change is made in paragraph (d)(2) of the final rule as a result of this comment.

Another commenter stated that the Department should permit a system where confidential UC information will automatically be disclosed for certain purposes under the Workforce Investment Act unless the individual ''opts out'' from disclosing personal information. Under the proposed and the final rule, this type of system would be permissible when disclosure is solely to public officials in the performance of his or her official duties. However, for non-governmental entities, the Department believes that any sharing of confidential UC information in this regard should be made only following an affirmative release by the individual. A passive system, such as an ''opt out'' system, does not guarantee that the individual fully understands the purposes of the disclosure and may result in the individual feeling coerced to disclose data. No change in the final rule is made as a result of this comment.

(e) Public Official

The proposed rule provided for disclosure of confidential UC information to a public official in the performance of his or her official duties. Since the 1970s, the Department's guidance to States has recognized this exception, which allows for a variety of uses of confidential UC information that the Department believes are beneficial, such as law enforcement, fraud and benefit accuracy in programs not addressed by Federal UC law (for example, Black Lung and State workers' compensation programs), program assessment (for example, of WIA and Vocational Education programs), and research.

The proposed rule described ''performance of official duties'' as administration or enforcement of law or, in the case of the legislative branch, oversight of UC law. It also stated that although research by a public official was permitted under this exception, this exception did not include research by an individual at a public or private university. However, it also stated that, where appropriate, a researcher could obtain access to confidential UC information under the exceptions provided for in proposed paragraph (f) (agent or contractor of a public official) or proposed paragraph (d)(2) (third party). Under paragraph (f) of the proposed rule, the public official would maintain the responsibility of insuring that the confidential UC information is safeguarded by its agent (for example, the researcher). The Department continues to believe that there is less risk of unauthorized use or disclosure of confidential UC information if responsibility for safeguarding confidentiality remains within the executive or legislative branches of government.

As discussed above in § 603.2 (d) (definition of public official), commenters expressed concern that limiting disclosure to only those legislators with ''oversight'' responsibility for the UC program was vague and, as a result, difficult to implement and determine as to the performance of ''oversight'' functions. In response, this reference to ''oversight'' was removed from the final rule. In so doing, paragraph (e) also required revision since it, too, included the ''oversight'' limitation as to elected officials (with regard to the meaning of ''performance of official duties'').

As a result, paragraph (e) of the final rule has been revised so that ''performance of official duties'' now means ''administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official.'' For further clarification, it also now provides that ''administration of law'' includes research related to the law administered by the public official. This sentence has been added to the final rule to eliminate any confusion regarding whether research conducted by a public official is part of the administration of its law.

In addition, new language has been added to the final rule to explain that ''execution of official responsibilities'' does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party. This language has been added to make it clear that UC records are not to be used to identify subjects for campaign solicitations.

(f) Agent or Contractor of Public Official

The proposed rule provided for disclosure of confidential UC information to an agent or contractor of a public official to whom disclosure is permissible under paragraph (e) (public official). This provision took into account that certain functions, including research, are often contracted out by public agencies. If confidential UC information could not be disclosed to agents or contractors of public officials, valuable research might be forgone or become more expensive, as agencies would have to undertake interviews of program participants in order to gather program evaluation information. A public official, ideally one with responsibility for the program or initiative on which research is being conducted, would be required to enter into the written agreement required by § 603.10 and be held responsible for use of the information by the contractor or

agent. Redisclosure of such information by a public official to an agent or contractor would be permitted only as provided in § 603.9(c).

One commenter suggested that the regulation be expanded ''to allow State agencies to disclose [confidential] UC information to researchers if the State agencies believe that the results of such research would be beneficial to the agency for the administration of agency programs,'' in light of the fact ''States do not have to pay'' for research from which they benefit. Another commenter, from a university, indicated concern that the public official must actually pay for the research as opposed to private foundations. The same commenter expressed concern that a university could not be viewed as an ''agent'' of the public official if the university was performing research of privately funded programs, such as employer-funded training or those supported by entities such as the United Way. The commenter stated that this ''significantly narrowed'' allowable uses of data.

In response, the Department notes that neither the proposed nor this final rule prohibits the sharing of information with researchers when an official of a public agency believes the research would be beneficial to the public agency. In such case, the researcher functions as the public agency's ''agent,'' even if the research was not initiated or funded by the agency, or even if the research may have applicability beyond the agency itself. To address the commenter's example of private training programs, the Department believes that allowing a public agency to correlate results of private research initiatives with its own programs would be beneficial to the public agency and, thus, the public agency could be persuaded to accept responsibility for the disclosure and use of confidential UC information. The Department believes this properly balances the need to protect confidential UC information with the desire to not restrict research. Therefore, no change is made in the final rule.

The Department emphasizes (as it stated in the preamble to the proposed rule) that States should provide non-confidential UC information to researchers in lieu of confidential UC information. Indeed, the expectation is that State agencies would explore this approach prior to providing confidential UC information. State agencies may, for example, encrypt identifiers before providing data to a researcher so that the researcher cannot identify individuals or employers. The agency could add subsequent years of data for the researcher using the same encryption so that the researcher can conduct longitudinal studies.

(g) Bureau of Labor Statistics

The proposed rule provided that the confidentiality requirement did not apply to information collected exclusively for statistical purposes under a cooperative agreement with the Bureau of Labor Statistics (BLS) and that Part 603 did not restrict or impose any condition on the transfer of any other information to the BLS under an agreement, or the BLS's disclosure or use of such information.

Under the proposed rule, transfers of information to the BLS were excepted from the confidentiality requirement because the conditions under which they occur already satisfied the requirements of the confidentiality rule, and the Department did not wish to interfere with the BLS' existing agreements or the ability of the BLS to carry out its statistical programs. Specifically, safeguards, agreements, and payment of costs are already in place. The BLS funds States for collection and disclosure of information. The BLS applies strict safeguards to protect the confidentiality of information it receives. Transfers of information to the BLS are governed by agreements that provide assurance that these safeguards will be followed. Moreover, the exemption for BLS is also based on the fact that its data is integrally related to the administration of the UC program. The collection and reporting authority of BLS is based on existing Federal law (29 U.S.C. 2) and subject to the confidentiality protections outlined in the Secretary of Labor's Order No. 9–75.

The U.S. Census Bureau commented on the proposed rule and expressed concern that ''several components of the proposed rule, if enacted, would be problematic for the Census Bureau's need to continue accessing [UC information].'' Further, the Census Bureau wanted to ensure that its activities would not be hampered by implementation of the confidentiality rule. As such, the Census Bureau requested it be afforded the same exemption as BLS from the confidentiality requirement. Another commenter also expressed support for exempting the Census Bureau from the confidentiality requirement.

The Department fully supports the Census Bureau's analytical efforts and its policy-relevant research. However, based on the Census Bureau's description of its current processes for securing and protecting confidential UC information and the fact that it is a public agency (to whose officials States are permitted to disclose confidential UC information), it appears that the rule would not inhibit its ability to obtain this information. Indeed, the rule merely sets forth the Department's long-standing guidance to States regarding disclosure to public officials and the terms and conditions which apply. States should already be following this guidance when disclosing to the Census Bureau. Therefore, no change to the rule is made as a result of these comments.

(i) UC Program Oversight and Audits (''As Required by Federal Law'' in the Proposed Rule)

This paragraph of the proposed rule provided for the disclosure of confidential UC information as required by ''Federal Law.'' However, other Federal agencies would already be covered under § 603.5(e) (disclosure to public officials, including disclosure to the IRS for Health Coverage Tax Credit (HCTC) purposes), § 603.5 (h) (disclosure in response to a court order or to an official with subpoena authority), or § 603.6(a) (disclosure necessary for the proper administration of the UC program, including disclosures to the Internal Revenue Service for purposes of UC tax administration). Given the unnecessary duplication it presented, proposed paragraph (i) (as required by Federal law) has been revised in the final rule (as discussed below).

To be more specific regarding its scope, paragraph (i) of the final rule is now limited to UC program oversight and audits. The proposed rule lacked such a provision (unlike the 1992 proposed rule) and the Department believes it is necessary to explicitly address the inapplicability of the confidentiality requirement to any disclosure to the Federal Government for purposes of UC program oversight and audits. As a result, paragraph (i) of the final rule provides that the confidentiality requirement does not apply to any disclosures to a Federal official for purposes of UC program oversight and audits, including disclosures necessary under the Department's rules at 20 CFR part 601 and 29 CFR parts 96 and 97.

The Department notes that the final rule does not implement the Secretary of Labor's authority under Section 303(a)(6), SSA. Section 303(a)(6) requires that State UC laws include provision for ''[t]he making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require * * * Section 303(a)(6) stands as a basis for requiring disclosure to the Department.

Section 603.6 What disclosures are required by this subpart?

(''What disclosures are required by Federal UC law'' in the proposed rule.)

In the proposed rule, this section was entitled, ''What disclosures are required by Federal UC law?'' The Department determined, upon further review, that a more appropriate characterization of this section is ''disclosures required by this subpart'' since the regulation is the mechanism that effectively implements the provisions of Federal UC law.

Paragraph (a) of the proposed rule set forth the Department's interpretation of Section 303(a)(1), SSA, as requiring disclosure of all information necessary for the proper administration of the UC program. This included disclosure to the Internal Revenue Service for purposes of UC tax administration or to the U.S. Citizenship and Immigration Services for purposes of verifying a claimant's immigration status. It also required disclosure for purposes of interstate and cross-program offsets under Section 303(g), SSA.

The Department believes it is necessary to clarify that the disclosures required under paragraph (a) are not subject to the confidentiality requirement. As a result, the final rule explicitly provides that the confidentiality requirement of 303(a)(1), SSA, and § 603.4 are not applicable to the disclosures required under paragraph (a). This paragraph continues to provide that ''administration of the UC program'' includes disclosures to claimants, employers, the Internal Revenue Service (for purposes of UC tax administration), and the U.S. Citizenship and Immigration Services (for purposes of verifying a claimant's immigration status).

Section 603.7 What requirements apply to subpoenas, other compulsory process, and disclosure to officials with subpoena authority?

(a) In General

In the proposed rule, this section set forth the Department's long-standing position on State responses to subpoenas and other compulsory processes attempting to obtain confidential UC information. Under certain conditions, it required the State or State UC agency to file and pursue a motion to quash, in the appropriate forum, when a subpoena or other compulsory process of a lawful authority, which required the production of or appearance for testimony about such information, is served upon the State UC agency or the State. If such a motion were denied, after a hearing in the appropriate forum, confidential UC information may be disclosed, but only upon such terms as the court or other forum may order, including that the recipient protect the disclosed information and pay the State's or State UC agency's costs of disclosure.

Several State UC agencies noted that the proposed rule appeared to require a motion to quash a subpoena even though most subpoenas can be avoided or resolved through other means that are far more efficient and economical. These commenters recommended that the rule recognize these other means. Another commenter noted that the court may order the disclosure of information through ''a true court order, and not merely a subpoena,'' and questioned the application of the rule in such cases. The Department agrees with these comments. As a result, this provision of the final rule has been revised to recognize that other means of avoiding disclosure of confidential UC information may be pursued before the need to file a motion to quash. Also, the final rule now recognizes that a motion to quash is necessary only if the court has not already ruled on the disclosure.

(b) Exceptions

The proposed rule provided two exceptions to the requirement to quash a subpoena: First, where a court has previously issued a binding precedential decision that requires such disclosures and, second, when confidential UC information is requested by an official of State or Federal government, other than a clerk of court on behalf of a litigant, with authority to obtain the information by subpoena under State or Federal law. These proposed exceptions recognized that filing a motion to quash in these circumstances may indeed be futile and a waste of administrative resources. They would also facilitate State cooperation with law enforcement.

Commenters requested clarification of the reference to ''binding legal precedent,'' noting that courts routinely deny motions to quash or otherwise order disclosure of confidential UC information without ever publishing a decision that may be considered precedential. In the same vein, another commenter objected to ''futile'' motions to quash, while another addressed this situation by urging an exception for situations ''where the obligation to disclose such data has been well established by a pattern of prior judicial decisions.'' The Department agrees that well-established patterns of judicial decisions may be treated as precedent. As a result, the final rule has been revised to permit disclosure where a well-established pattern of prior court decisions have required the same type of disclosure. Nonetheless, the Department encourages those States within which courts routinely deny motions to quash, to examine their laws and regulations to determine if an amendment may result in such motions being upheld.

Two State UC agencies noted the proposed rule's exception from filing a motion to quash applied to State or Federal governmental officials with subpoena authority, but did not apply to county or metropolitan governmental officials with the authority to subpoena records, such as prosecutors. The Department notes that, generally, a governmental official will need to exercise subpoena authority only when State UC law does not specifically allow the disclosure to such official. However, the Department did not intend to prohibit these officials from obtaining information for administration of their official duties. As a result, the final rule has been revised to include ''local'' governmental officials within this exception.

One commenter noted that § 603.7(b) of the proposed rule was ''confusing'' because it stated that the exceptions to filing a motion to quash a subpoena applied ''regardless of whether a subpoena was issued.'' The quoted language was included to permit the State UC agency, if it so chose, to disclose information that was requested by a public official with subpoena authority without forcing the public official to actually issue the subpoena. To more accurately reflect this option, the Department has changed the final rule to clarify that the State or State UC agency may disclose the requested confidential UC information to a public official with subpoena authority without the actual issuance of a subpoena.

The Department believes that filing motions to quash subpoenas involving the disclosure of confidential UC information is an important means of avoiding unnecessary or unlawful disclosures, which might deter claimants from exercising their rights or employers from providing information. Where the exceptions apply, a State may still file such a motion if warranted, or may file a motion to require that the recipient protect the disclosed information or for reimbursement of costs. (As described in § 603.8(b), seeking reimbursement in some manner is required if grant funds are used to cover the costs of the disclosure.) If the State law is sufficiently rigorous concerning the disclosure of confidential UC information, the courts may be less inclined to enforce

subpoenas; so, States may wish to review their State laws in this regard. To conserve time and funds, States may wish to pursue a motion to quash by mail or by telephone if permitted by State law.

Finally, some commenters questioned the need for the proposed rule to address disclosing confidential UC information to public officials with subpoena authority given that § 603.5(e) permits disclosure to public officials. The Department's answer is that disclosures under § 603.5(e) must be made under the agreements described in § 603.10, which require, among other things, the payment of costs and the safeguarding of information, before any information may be disclosed. Thus, that provision is limited to cases where disclosure is explicitly authorized or required under the State UC law. The subpoena exception, however, pertains to situations where governmental officials have the authority to demand information under *their* laws, but where State UC law may not permit such disclosure or where an agreement may not have been entered into, thus necessitating the public official to obtain the confidential UC information through a subpoena. Therefore, no change is made in the final rule.

Section 603.8 What are the requirements for the payment of costs and program income?

(a) In General

This paragraph of the proposed rule explained, in general, that grant funds could not be used to pay any of the costs of making any disclosure (except as provided in paragraph (b) of this section). Upon review, clarifications to proposed paragraph (a) became necessary.

First, ''disclosure to the IRS for HCTC purposes'' was misidentified in proposed paragraph (a) as a reference to § 603.5(h) when it should have referenced § 603.5(i). However, as discussed previously, proposed paragraph (i) of § 603.5 was replaced with a new provision in the final rule concerning UC program oversight and audits. In the discussion concerning the changes to proposed paragraph (i), it was explained that ''disclosure to the IRS for HCTC purposes,'' like disclosures to other Federal agencies, would already be covered under the provision relating to disclosure to public officials (§ 603.5(e)). As a result, rather than correct the misidentification in proposed paragraph (a) of § 603.8, we have deleted the reference to ''disclosure to the IRS for HCTC purposes.''

Second, revision to the final rule became necessary because the rule did not distinguish between the two types of informed consent disclosures (addressed in § 603.5(d)) as they related to the use of grant funds for the costs of such disclosures. Thus, revision to paragraph (a) (and to paragraph (b) of this section, as discussed below) became necessary to make explicit the fact that grant funds have never been allowed to be used for the costs of making disclosures to third parties (other than agents) on the basis of informed consent. Accordingly, the final rule was revised to explicitly state that grant funds may *not* be used to pay for the costs of disclosures under § 603.5(d)(2) (third party (other than an agent) or disclosures made on an ongoing basis).

(b) Use of Grant Funds Permitted

This paragraph of the proposed rule set forth the circumstances under which grant funds may be used to pay for the costs of disclosing confidential UC information. As discussed above, revision to this paragraph became necessary to clarify that grant funds may be used to pay for costs associated with disclosures to an agent on the basis of informed consent. Therefore, paragraph (b) of the final rule has been revised to make this permitted use of grant funds explicit.

As discussed previously, § 603.5(i) of the proposed rule was changed to explicitly address the inapplicability of the confidentiality requirement to any disclosure for purposes of UC program oversight and audits. In so doing, revision to § 603.8(b) of the proposed rule was also required in order to properly address those costs relating to disclosures for UC program oversight and audits under § 603.5(i) of the final rule. Accordingly, § 603.8 (b) of the final rule has been revised to specifically provide that grant funds may be used to pay the costs associated with disclosures to the Department for oversight and audits.

(d) Payment of Costs

The proposed rule required the payment of costs, calculated in accordance with paragraph (c), to be paid by the recipient of the information either in advance or by way of reimbursement. If the recipient is not a public official, such costs, except for good reason, would be required to be paid in advance. Payment in advance means full payment of costs before or at the time the disclosed information is given in hand or sent to the recipient.

The proposed rule further provided that the requirement for payment of costs is met when a State UC agency has in place a reciprocal data-sharing agreement or arrangement with another agency or entity. ''Reciprocal'' means that the relative benefits received by each party to the agreement or arrangement are approximately equal.

Two commenters observed that the proposed rule appeared to prohibit another entity from paying costs on behalf of the recipient and suggested that the rule be amended to permit such payments. The purpose of requiring payment of costs is to assure that UC grant funds are not used for purposes unrelated to the administration of the UC program. Receiving payment from an entity other than the recipient accomplishes this. As a result of these comments, the final rule has been revised to recognize that costs may be paid by another source on behalf of the recipient.

Two other commenters requested clarification regarding the proposed rule's statement that, if the recipient is not a public official, ''costs, except for good reasons (such as when the disclosure involves minimal cost) must be paid'' in advance. These commenters questioned whether the reference to ''minimal costs'' meant that the recipient need not pay any costs. As noted elsewhere in the rule, all costs incurred by a recipient must be paid except when there ''is not more than an incidental amount of [UC agency] staff time and no more than nominal processing costs'' are involved. (§ 603.8(b).) Thus, the reference to minimal costs only relates to the advance payment of costs. To avoid confusion, the Department has deleted the reference to minimal costs from the final rule.

(e) Program Income

The proposed rule provided that reimbursed costs and any funds generated by the disclosure of information are program income and may be used only as permitted by 29 CFR 97.25(g) (on program income). It also provided that program income may not be used to benefit a State's general fund or another program.

One commenter expressed concern about how the cost requirements would impact the Wage Record Interchange System (WRIS), which is an interstate data exchange system that facilitates the exchange of UC wage records for assessing program performance under the WIA. Noting that the proposed rule provided that UC grant funds may be used to pay if disclosure does not result in ''more than an incidental amount of staff time and no more than nominal processing costs are involved,'' the commenter stated a belief that WRIS

costs are ''relatively minor'' and therefore should be considered incidental or nominal. The Department does not agree. By permitting the use of UC grants where costs of disclosure are incidental or nominal, we merely recognize that some costs are so small that there may be no practical purpose served by attempting to recover these costs. Generally, these will be one-time only, ad hoc requests from individuals or their agents. The Department does not believe that the costs of setting up agreements, establishing data exchange protocols, and exchanging data on an ongoing basis can be said to be incidental or nominal. No change in the final rule is made as a result of this comment.

Section 603.9 What safeguards and security requirements apply to disclosed information?

(b) Safeguards To Be Required of Recipients

Paragraph (b) of the proposed rule set forth the safeguards that the State or State UC agency had to require of recipients.

Paragraph (b)(1)(vii) of the proposed rule required States to maintain a tracking system sufficient to allow an audit of compliance with the requirements of this subpart. The purpose of maintaining this system was to ensure that recipients of disclosed information were complying with the required safeguards. The proposed rule provided that this responsibility could not be handed over to the recipient. It also provided that where recipients were required to pay for the costs of making a disclosure, the costs of maintaining this system should be reflected in the amount charged to the recipient. Thus, the maintenance of this system would not increase costs for State UC agencies.

Several commenters stated that it was impractical or expensive to maintain a ''tracking system'' that is ''sufficient to allow an audit of compliance.'' As a result of these comments, the requirement for a ''tracking system'' has been deleted from § 603.9(b)(1)(vii) of the final rule. However, the Department continues to believe that some system must exist for allowing an audit if there is to be any guarantee that confidential UC information received from a UC agency is not misused. Therefore, the final rule requires a system ''sufficient to allow an audit of compliance.'' While tracking individual transactions may be the most efficient means of monitoring certain disclosures, other methods may be equally effective. For example, in the case of wage records that are routinely transmitted to another governmental agency, it is sufficient that, prior to any audit, the UC agency be able to re-run the computer program that generated the wage records that were transmitted and use that output for the basis of its audit. The Department also notes that not all disclosures must be subject to this system. For example, the safeguards required by § 603.9 do not apply to disclosures made to an individual (§ 603.5(c)) or the individual's agent (§ 603.5(d)(1)).

Paragraph (b)(2) of the proposed rule specifically required the State to conduct, in the case of optional disclosures to entities on the basis of informed consent (§ 603.5(d)(2)), a periodic audit of sample transactions to assure that the entity receiving information has on file a written release authorizing each access. The audit was required to ensure that the information was not being used for any unauthorized purpose.

Several commenters expressed concern regarding this requirement, stating that such audits are costly and burdensome. As the Department noted in the general comments regarding increased costs and burden, this audit requirement is applicable only to disclosure made under § 603.5(d)(2) pertaining to a third party (other than an agent) or disclosures made on an ongoing basis. (The Department notes that, in cases involving governmental entities receiving information under §§ 603.5(e) or 603.6, the recipient is merely required to provide for ''on-site inspections.'' The final rule does not mandate audits in these cases given the nature of the governmental entities, which are also subject to their own confidentiality laws; however, the Department believes it is important to maintain the right to perform ''on-site inspections'' in the event any allegation of misuse arises.)

The Department believes States must take reasonable actions to periodically audit these third parties. As discussed previously, the Department is concerned that such disclosures have a greater potential threat to employer or individual privacy. As such, we do not believe it is responsible to provide confidential UC information to such third parties without some requirement for auditing. Therefore, no change is made to the final rule.

The proposed rule did not, as commenters appeared to assume, dictate when audits must occur, nor did it dictate the nature and the extent of the audit. The Department believes these matters are best left to the States, which are in the best position to determine how often a particular recipient should be audited, taking into account volume, any past audit exceptions, and the nature of the recipient, such as whether the recipient is in the business of disclosing information for profit. What is important is that any audit process be sufficient to assure that no misuse of confidential UC information is taking place. The Department also notes that the costs of performing any such audits must be built into the agreement that authorizes disclosure of confidential UC information to the recipient. Thus, for example, the costs of auditing a private business that receives confidential UC information under an informed consent agreement are to be built into the disclosure agreement. No change is made in the final rule as a result of these comments.

Paragraph (b)(2) of the proposed rule also required that all employees of entities receiving access to information under § 603.5(d)(2) be subject to the same confidentiality requirements, and State criminal penalties for violation of those requirements, as are employees of the State UC agency.

The National Association of State Workforce Agencies questioned how penalties would be assessed for information that is sent from one State to another State, particularly in regard to the WRIS. The specific question was whether the law of the sending or receiving State would apply in the case of unauthorized disclosures. The Department believes that no State should disclose confidential UC information to another entity—including another State—unless it retains the authority to apply its legal sanctions for unauthorized uses. This is reflected in § 603.9(b)(1), regarding safeguards to be required of recipients, which provides that ''The State or State UC agency must * * * (v) Require each recipient agency or entity to (A) Instruct all personnel having access to the disclosed information about * * * the sanctions specified in the State law for unauthorized disclosure of information * * * ''.

As a practical matter, the Department recognizes that a receiving State is in a better position to apply sanctions on violators who reside in that State, provided its confidentiality law is applicable to such violation. As such, in the case of interstate data sharing arrangements such as WRIS, a wise additional step is to require the receiving State to take the lead in applying legal sanctions. Although no change to the rule is made as a result of this comment, a State must make certain that prior to the release of confidential UC information to an entity outside the State, some provision exists to protect

such information, either by the disclosing State or by the law of the receiving State within which the entity exists.

Section 603.11 How do States notify claimants and employers about the uses of their information?

(a) Claimants

This section of the proposed rule required State UC agencies to notify claimants and employers how confidential UC information about them may be requested and utilized. This section was derived from the current 20 CFR 603.4 (revised by this rule) but, unlike the current 20 CFR 603.4, it applied to employers as well as claimants. State privacy law may require more detailed notification.

(b) Employers

The proposed rule provided that current Part 603 (specifically, § 603.4 of that Part) implemented the notification requirement applicable to the IEVS of Section 1137(a)(6), SSA. The proposed rule restated the notification requirement of Section 1137(a)(6), SSA, as a general requirement of Section 303(a)(1), SSA. It further explained that notifying claimants and employers what use may be made of UC information is necessary to maintaining their confidence in the Federal-State UC system, which is critical to its proper and efficient administration.

With regard to claimant notification, several State UC agencies questioned the proposed requirement that claimants be notified ''at the time of application, and periodically thereafter, in what situations confidential UC information pertaining to the claimant may be requested and utilized'' and the similar requirement for employers. Some requested more detail about when the notification is provided, what is meant by ''periodically thereafter,'' and the contents of the notice, specifically with respect to the details of the ''situations'' the notice must cover. One commenter objected to orally informing claimants at the time of ''initial claim intake'' because of the costs involved. Others suggested that notification ''at the time an initial claim is filed by an individual'' would be adequate.

The requirement that claimants be notified ''at the time of filing [a claim] and periodically thereafter'' has been a requirement of Section 1137(a)(6), SSA, pertaining to the IEVS program, since 1984. As such, it became a part of the Department's implementation of the IEVS program, currently found at 20 CFR 603.4 (revised by this rule). Thus, State UC agencies should already be notifying claimants concerning sharing of confidential UC information under IEVS. This final rule merely expands this claimant notification requirement so that the notice refers to uses beyond the IEVS program. It also extends notification to employers as well as claimants.

Since the requirement that claimants be notified ''periodically thereafter'' is a statutory requirement, States *must* periodically notify claimants. The Department recognizes that ''periodic'' notice to UC claimants is not always necessary due to the relatively short duration of UC claims. Although some commenters asked for clarification as to how this ''periodic'' requirement could be met, we believe that the rule is clear that ''notice on or attached to subsequent additional claims will satisfy the requirements for periodic notice thereafter.'' States are not required to offer other forms of periodic notice to claimants if they offer such notice as part of taking an additional claim.

The content of the notice to claimants need not be complex or lengthy. It could, for example, simply state that confidential UC information will be used for other governmental purposes, including verifying an individual's eligibility for other governmental programs. Although the statutory requirement appears to permit oral notice, the Department prefers, but does not require, that notice be written. Such written notification may be, for example, in the form of a benefit rights pamphlet or a special enclosure in a routine mailing to the claimant that is associated with the initial application. In the case of Internet claims, a special screen may advise the claimant of the uses of confidential UC information. The notice need not say that UC information will be used for UC purposes, or address any releases that may be authorized by the claimant. At the same time, this rule does not prohibit States from providing such information.

Concerns relating to the content of the notification may have been a result of the language in the proposed rule referring to identifying the ''situations'' within which confidential UC information may be requested and utilized. The use of the word ''situations'' was not intended to require that the notice contain an exhaustive listing of all potential recipients of confidential UC information. In response to any misperception and to provide more guidance on the actual contents of the notice (including assuring any notice meets the IEVS requirement), § 603.11(a) is revised to provide that claimants must be notified ''at the time of application, and periodically thereafter, that confidential UC information pertaining to the claimant may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs.''

With regard to employer notification, the content of such notice may be as simple as that which is given to the claimant. It is sufficient that employers be notified annually with their yearly contribution rate notices (although special provision would need to be made for reimbursing employers since they do not receive annual rate notices), through any agency UC letter sent to all employers, or a statement on the quarterly wage report form. To parallel the revision to § 603.11(a) (concerning claimant notification), § 603.11(b) is revised to provide that employers must be notified ''that wage information and other confidential UC information may be requested and utilized for other governmental purposes, including, but not limited to, verification of an individual's eligibility for other government programs.''

Executive Order 12866

This final rule is a ''significant regulatory action'' within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the final rule has been submitted to, and reviewed by, the Office of Management and Budget (OMB).

However, the final rule is not ''economically significant'' because it does not have an annual effect on the economy of $100 million or more. The Department has also determined that the final rule has no adverse material impact upon the economy and that it does not materially alter the budgeting impact of entitlement, grants, user fees or loan programs, or the rights and obligations of recipients thereof.

Further, the Department has evaluated the final rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although it impacts States and State UC agencies, it does not adversely affect them in a material way. The final rule protects State UC agencies from becoming clearinghouses of confidential UC information and preserves UC grant funds for program purposes. In addition, the final rule

maintains State flexibility in deciding whether to permit certain disclosures of confidential UC information for purposes other than the administration of the UC program so long as certain safeguards are followed.

Executive Order 13132

This rule was reviewed in accordance with Executive Order 13132. It was determined that the rule may have federalism implications. During an earlier stage in this rulemaking process, a federalism consultation with organizations representing State elected officials was held at the Department on October 19, 2000. These organizations expressed no concerns at that time or in the following months. Twenty-five States submitted comments on the 1992 proposed regulation, and these comments were considered in the development of the most recent proposed rule published in the **Federal Register** on August 12, 2004 (69 FR 50022).

In connection with the most recent proposed rule, federalism consultations with organizations representing State elected officials occurred on October 4 and 5, 2004. Again, these organizations expressed no concerns during the consultation process. The majority of comments received were from individual State agencies. The Department believes this final rule adequately addresses the concerns expressed in those comments.

Executive Order 12988

The Department drafted and reviewed this final regulation in accordance with Executive Order 12988, Civil Justice Reform, and it does not unduly burden the Federal court system. The final rule was written to minimize litigation and provide a clear legal standard for affected conduct, and was reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

This final rule was reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et. seq.*) and Executive Order 12875. The Department has determined that this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Paperwork Reduction Act

The following sections of this final rule contain information collection requirements or revises information collection requirements in current 20 CFR part 603: §§ 603.5, 603.6, 603.7, 603.8, 603.9, 603.10, 603.11, 603.22, and 603.23. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collection requirements in this final rule were submitted to the OMB for approval during the NPRM stage. This collection of information was approved under OMB control number 1205–0238 through August 31, 2007.

The annual burden associated with this final rule for all States combined is approximately 25,810 hours.

Regulatory Flexibility Act

This final rule does not have a ''significant economic impact on a substantial number of small entities.'' The final rule affects States and State agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Congressional Review Act

This final rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule does not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Effect on Family Life

The Department certifies that this final rule was assessed in accordance with Pub. L. 105–277, 112 Stat. 2681, and that the final rule does not adversely affect the well-being of the nation's families.

List of Subjects in 20 CFR Part 603

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Signed at Washington, DC on September 18, 2006.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

Words of Issuance

■ For the reasons set forth in the preamble, part 603 of Title 20, Code of Federal Regulations is revised as set forth below:

PART 603—FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

Subpart A—In General

Sec.
603.1 What are the purpose and scope of this part?
603.2 What definitions apply to this part?

Subpart B—Confidentiality and Disclosure Requirements

603.3 What is the purpose and scope of this subpart?
603.4 What is the confidentiality requirement of Federal UC law?
603.5 What are the exceptions to the confidentiality requirement?
603.6 What disclosures are required by this subpart?
603.7 What requirements apply to subpoenas, other compulsory processes, and disclosure to officials with subpoena authority?
603.8 What are the requirements for payment of costs and program income?
603.9 What safeguards and security requirements apply to disclosed information?
603.10 What are the requirements for agreements?
603.11 How do States notify claimants and employers about the uses of their information?
603.12 How are the requirements of this part enforced?

Subpart C—Mandatory Disclosure for Income and Eligibility Verification System (IEVS)

603.20 What is the purpose and scope of this subpart?
603.21 What is a requesting agency?
603.22 What information must State UC agencies disclose for purposes of an IEVS?
603.23 What information must State UC agencies obtain from other agencies, and crossmatch with wage information, for purposes of an IEVS?

Authority: 42 U.S.C. 1302(a); Secretary's Order No. 4–75 (40 FR 18515) and Secretary's Order No. 14–75 (November 12, 1975).

Subpart A—In General

§ 603.1 What are the purpose and scope of this part?

The purpose of this part is to implement the requirements of Federal

UC law concerning confidentiality and disclosure of UC information. This part applies to States and State UC agencies, as defined in § 603.2(f) and (g).

§ 603.2 What definitions apply to this part?

For the purposes of this part:

(a)(1) *Claim information* means information about:

(i) Whether an individual is receiving, has received, or has applied for UC;

(ii) The amount of compensation the individual is receiving or is entitled to receive; and

(iii) The individual's current (or most recent) home address.

(2) For purposes of subpart C (IEVS), claim information also includes:

(i) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay; and

(ii) Any other information contained in the records of the State UC agency that is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(b) *Confidential UC information* and *confidential information* mean any UC information, as defined in paragraph (j) of this section, required to be kept confidential under § 603.4.

(c) *Public domain information* means—

(1) Information about the organization of the State and the State UC agency and appellate authorities, including the names and positions of officials and employees thereof;

(2) Information about the State UC law (and applicable Federal law) provisions, rules, regulations, and interpretations thereof, including statements of general policy and interpretations of general applicability; and

(3) Any agreement of whatever kind or nature, including interstate arrangements and reciprocal agreements and any agreement with the Department of Labor or the Secretary, relating to the administration of the State UC law.

(d) *Public official* means an official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(e) *Secretary* and *Secretary of Labor* mean the cabinet officer heading the United States Department of Labor, or his or her designee.

(f) *State* means a State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(g) *State UC agency* means an agency charged with the administration of the State UC law.

(h) *State UC law* means the law of a State approved under Section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(i) *Unemployment compensation* (UC) means cash benefits payable to individuals with respect to their unemployment.

(j) *UC information* and *State UC information* means information in the records of a State or State UC agency that pertains to the administration of the State UC law. This term includes those State wage reports collected under the IEVS (Section 1137 of the Social Security Act (SSA)) that are obtained by the State UC agency for determining UC monetary eligibility or are downloaded to the State UC agency's files as a result of a crossmatch but does not otherwise include those wage reports. It does not include information in a State's Directory of New Hires, but does include any such information that has been disclosed to the State UC agency for use in the UC program. It also does not include the personnel or fiscal information of a State UC agency.

(k) *Wage information* means information in the records of a State UC agency (and, for purposes of § 603.23 (IEVS)), information reported under provisions of State law which fulfill the requirements of Section 1137, SSA) about the—

(1) Wages paid to an individual,

(2) Social security account number (or numbers, if more than one) of such individual, and

(3) Name, address, State, and the Federal employer identification number of the employer who paid such wages to such individual.

Subpart B—Confidentiality and Disclosure Requirements

§ 603.3 What is the purpose and scope of this subpart?

This subpart implements the basic confidentiality requirement derived from Section 303(a)(1), SSA, and the disclosure requirements of Sections 303(a)(7), (c)(1), (d), (e), (h), and (i), SSA, and Section 3304(a)(16), Federal Unemployment Tax Act (FUTA). This subpart also establishes uniform minimum requirements for the payment of costs, safeguards, and data-sharing agreements when UC information is disclosed, and for conformity and substantial compliance with this proposed rule. This subpart applies to States and State UC agencies, as defined in § 603.2(f) and (g), respectively.

§ 603.4 What is the confidentiality requirement of Federal UC law?

(a) *Statute.* Section 303(a)(1) of the SSA (42 U.S.C. 503(a)(1)) provides that, for the purposes of certification of payment of granted funds to a State under Section 302(a) (42 U.S.C. 502(a)), State law must include provision for such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) *Interpretation.* The Department of Labor interprets Section 303(a)(1), SSA, to mean that ''methods of administration'' that are reasonably calculated to insure the full payment of UC when due must include provision for maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part.

(c) *Application.* Each State law must contain provisions that are interpreted and applied consistently with the interpretation in paragraph (b) of this section and with this subpart, and must provide penalties for any disclosure of confidential UC information that is inconsistent with any provision of this subpart.

§ 603.5 What are the exceptions to the confidentiality requirement?

The following are exceptions to the confidentiality requirement. Disclosure of confidential UC information is permissible under the exceptions in paragraphs (a) through (g) of this section only if authorized by State law and if such disclosure does not interfere with the efficient administration of the State UC law. Disclosure of confidential UC information is permissible under the exceptions in paragraphs (h) and (i) of this section without such restrictions.

(a) *Public domain information.* The confidentiality requirement of § 603.4 does not apply to public domain information, as defined at § 603.2(c).

(b) *UC appeals records.* Disclosure of appeals records and decisions, and precedential determinations on coverage of employers, employment, and wages, is permissible provided all social security account numbers have been removed and such disclosure is otherwise consistent with Federal and State law.

(c) *Individual or employer.* Disclosure for non-UC purposes, of confidential UC

information about an individual to that individual, or of confidential UC information about an employer to that employer, is permissible.

(d) *Informed consent.* Disclosure of confidential UC information on the basis of informed consent is permissible in the following circumstances—

(1) *Agent*—to one who acts for or in the place of an individual or an employer by the authority of that individual or employer if—

(i) In general—

(A) The agent presents a written release (which may include an electronically submitted release that the State determines is authentic) from the individual or employer being represented;

(B) When a written release is impossible or impracticable to obtain, the agent presents such other form of consent as is permitted by the State UC agency in accordance with State law;

(ii) In the case of an elected official performing constituent services, the official presents reasonable evidence (such as a letter from the individual or employer requesting assistance or a written record of a telephone request from the individual or employer) that the individual or employer has authorized such disclosure; or

(iii) In the case of an attorney retained for purposes related to the State's UC law, the attorney asserts that he or she is representing the individual or employer.

(2) *Third party (other than an agent) or disclosure made on an ongoing basis*—to a third party that is not acting as an agent or that receives confidential information following an informed consent disclosure on an ongoing basis (even if such entity is an agent), but only if that entity obtains a written release from the individual or employer to whom the information pertains.

(i) The release must be signed and must include a statement—

(A) Specifically identifying the information that is to be disclosed;

(B) That State government files will be accessed to obtain that information;

(C) Of the specific purpose or purposes for which the information is sought and a statement that information obtained under the release will only be used for that purpose or purposes; and

(D) Indicating all the parties who may receive the information disclosed.

(ii) The purpose specified in the release must be limited to—

(A) Providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release; or

(B) Carrying out administration or evaluation of a public program to which the release pertains.

Note to paragraph (d): The Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign), Pub. L. 106–229, may apply where a party wishes to effectuate electronically an informed consent release (§ 603.5(d)(2)) or a disclosure agreement (§ 603.10(a)) with an entity that uses informed consent releases. E-Sign, among other things, sets forth the circumstances under which electronic signatures, contracts, and other records relating to such transactions (in lieu of paper documents) are legally binding. Thus, an electronic communication may suffice under E-Sign to establish a legally binding contract. The States will need to consider E-Sign's application to these informed consent releases and disclosure agreements. In particular, a State must, to conform and substantially comply with this regulation, assure that these informed consent releases and disclosure agreements are legally enforceable. If an informed consent release or disclosure agreement is to be effectuated electronically, the State must determine whether E-Sign applies to that transaction, and, if so, make certain that the transaction satisfies the conditions imposed by E-Sign. The State must also make certain that the electronic transaction complies with every other condition necessary to make it legally enforceable.

(e) *Public official.* Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible. ''Performance of official duties'' means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(f) *Agent or contractor of public official.* Disclosure of confidential UC information to an agent or contractor of a public official to whom disclosure is permissible under paragraph (e) of this section.

(g) *Bureau of Labor Statistics.* The confidentiality requirement does not apply to information collected exclusively for statistical purposes under a cooperative agreement with the Bureau of Labor Statistics (BLS). Further, this part does not restrict or impose any condition on the transfer of any other information to the BLS under an agreement, or the BLS's disclosure or use of such information.

(h) *Court order; official with subpoena authority.* Disclosure of confidential UC information in response to a court order or to an official with subpoena authority is permissible as specified in § 603.7(b).

(i) *UC Program Oversight and Audits.* The confidentiality requirement does not apply to any disclosure to a Federal official for purposes of UC program oversight and audits, including disclosures under 20 CFR part 601 and 29 CFR parts 96 and 97.

§ 603.6 What disclosures are required by this subpart?

(a) The confidentiality requirement of 303(a)(1), SSA, and § 603.4 are not applicable to this paragraph (a) and the Department of Labor interprets Section 303(a)(1), SSA, as requiring disclosure of all information necessary for the proper administration of the UC program. This includes disclosures to claimants, employers, the Internal Revenue Service (for purposes of UC tax administration), and the U.S. Citizenship and Immigration Services (for purposes of verifying a claimant's immigration status).

(b) In addition to Section 303(f), SSA (concerning an IEVS), which is addressed in subpart C, the following provisions of Federal UC law also specifically require disclosure of State UC information and State-held information pertaining to the Federal UC and benefit programs of Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), Trade Adjustment Assistance (TAA) (except for confidential business information collected by States), Disaster Unemployment Assistance (DUA), and any Federal UC benefit extension program:

(1) Section 303(a)(7), SSA, requires State law to provide for making available, upon request, to any agency of the United States charged with the administration of public works or assistance through public employment, disclosure of the following information with respect to each recipient of UC—

(i) Name;

(ii) Address;

(iii) Ordinary occupation;

(iv) Employment status; and

(v) A statement of such recipient's rights to further compensation under the State law.

(2) Section 303(c)(1), SSA, requires each State to make its UC records available to the Railroad Retirement Board, and to furnish such copies of its UC records to the Railroad Retirement Board as the Board deems necessary for its purposes.

(3) Section 303(d)(1), SSA, requires each State UC agency, for purposes of determining an individual's eligibility benefits, or the amount of benefits, under a food stamp program established under the Food Stamp Act of 1977, to disclose, upon request, to officers and

employees of the Department of Agriculture, and to officers or employees of any State food stamp agency, any of the following information contained in the records of the State UC agency—

(i) Wage information,

(ii) Whether an individual is receiving, has received, or has made application for, UC, and the amount of any such compensation being received, or to be received, by such individual,

(iii) The current (or most recent) home address of such individual, and

(iv) Whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefore.

(4) Section 303(e)(1), SSA, requires each State UC agency to disclose, upon request, directly to officers or employees of any State or local child support enforcement agency, any wage information contained in the records of the State UC agency for purposes of establishing and collecting child support obligations (not to include custodial parent support obligations) from, and locating, individuals owing such obligations.

(5) Section 303(h), SSA, requires each State UC agency to disclose quarterly, to the Secretary of Health and Human Services (HHS), wage information and claim information as required under Section 453(i)(1) of the SSA (establishing the National Directory of New Hires), contained in the records of such agency, for purposes of Subsections (i)(1), (i)(3), and (j) of Section 453, SSA (establishing the National Directory of New Hires and its uses for purposes of child support enforcement, Temporary Assistance to Needy Families (TANF), TANF research, administration of the earned income tax credit, and use by the Social Security Administration).

(6) Section 303(i), SSA, requires each State UC agency to disclose, upon request, to officers or employees of the Department of Housing and Urban Development (HUD) and to representatives of a public housing agency, for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of HUD, any of the following information contained in the records of such State agency about any individual applying for or participating in any housing assistance program administered by HUD who has signed a consent form approved by the Secretary of HUD—

(i) Wage information, and

(ii) Whether the individual is receiving, has received, or has made application for, UC, and the amount of any such compensation being received (or to be received) by such individual.

(7) Section 3304(a)(16), FUTA requires each State UC agency—

(i) To disclose, upon request, to any State or political subdivision thereof administering a Temporary Assistance to Needy Families Agency (TANF) program funded under part A of Title IV of the SSA, wage information contained in the records of the State UC agency which is necessary (as determined by the Secretary of HHS in regulations) for purposes of determining an individual's eligibility for TANF assistance or the amount of TANF assistance; and

(ii) To furnish to the Secretary of HHS, in accordance with that Secretary's regulations at 45 CFR 303.108, wage information (as defined at 45 CFR 303.108(a)(2)) and UC information (as defined at 45 CFR 303.108(a)(3)) contained in the records of such agency for the purposes of the National Directory of New Hires established under Section 453(i) of the SSA.

(c) Each State law must contain provisions that are interpreted and applied consistently with the requirements listed in this section.

§ 603.7 What requirements apply to subpoenas, other compulsory processes, and disclosure to officials with subpoena authority?

(a) *In general*. Except as provided in paragraph (b) of this section, when a subpoena or other compulsory process is served upon a State UC agency or the State, any official or employee thereof, or any recipient of confidential UC information, which requires the production of confidential UC information or appearance for testimony upon any matter concerning such information, the State or State UC agency or recipient must file and diligently pursue a motion to quash the subpoena or other compulsory process if other means of avoiding the disclosure of confidential UC information are not successful or if the court has not already ruled on the disclosure. Only if such motion is denied by the court or other forum may the requested confidential UC information be disclosed, and only upon such terms as the court or forum may order, such as that the recipient protect the disclosed information and pay the State's or State UC agency's costs of disclosure.

(b) *Exceptions*. The requirement of paragraph (a) of this section to move to quash subpoenas shall not be applicable, so that disclosure is permissible, where—

(1) *Court Decision*—a subpoena or other compulsory legal process has been served and a court has previously issued a binding precedential decision that requires disclosures of this type, or a well-established pattern of prior court decisions have required disclosures of this type, or

(2) *Official with Subpoena Authority*—Confidential UC information has been subpoenaed, by a local, State or Federal governmental official, other than a clerk of court on behalf of a litigant, with authority to obtain such information by subpoena under State or Federal law. The State or State UC agency may choose to disclose such confidential UC information to these officials without the actual issuance of a subpoena.

§ 603.8 What are the requirements for payment of costs and program income?

(a) *In general*. Except as provided in paragraph (b) of this section, grant funds must not be used to pay any of the costs of making any disclosure of UC information. Grant funds may not be used to pay any of the costs of making any disclosures under § 603.5(d)(2) (third party (other than an agent) or disclosure made on an ongoing basis), § 603.5(e) (optional disclosure to a public official), § 603.5(f) (optional disclosure to an agent or contractor of a public official), and § 603.5(g) (optional disclosure to BLS), § 603.6(b) (mandatory disclosures for non-UC purposes), or § 603.22 (mandatory disclosure for purposes of an IEVS).

(b) *Use of grant funds permitted*. Grant funds paid to a State under Section 302(a), SSA, may be used to pay the costs of only those disclosures necessary for proper administration of the UC program. (This may include some disclosures under § 603.5(a) (concerning public domain information), § 603.5(c) (to an individual or employer), and § 603.5(d)(1) (to an agent).) In addition, grant funds may be used to pay costs of disclosures under § 603.5(i) (for UC Program Oversight and Audits) and § 603.6(a) (for the proper administration of the UC program). Grant funds may also be used to pay costs associated with disclosures under § 603.7(b)(1) (concerning court-ordered compliance with subpoenas) if a court has denied recovery of costs, or to pay costs associated with disclosures under § 603.7(b)(2) (to officials with subpoena authority) if the State UC agency has attempted but not been successful in obtaining reimbursement of costs. Finally, grant funds may be used to pay costs associated with any disclosure of UC information if not more than an

incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure.

(c) *Calculation of costs.* The costs to a State or State UC agency of processing and handling a request for disclosure of information must be calculated in accordance with the cost principles and administrative requirements of 29 CFR part 97 and Office of Management and Budget Circular No. A–87 (Revised). For the purpose of calculating such costs, any initial start-up costs incurred by the State UC agency in preparation for making the requested disclosure(s), such as computer reprogramming necessary to respond to the request, and the costs of implementing safeguards and agreements required by §§ 603.9 and 603.10, must be charged to and paid by the recipient. (Start-up costs do not include the costs to the State UC agency of obtaining, compiling, or maintaining information for its own purposes.) Postage or other delivery costs incurred in making any disclosure are part of the costs of making the disclosure. Penalty mail, as defined in 39 U.S.C. 3201(1), must not be used to transmit information being disclosed, except information disclosed for purposes of administration of State UC law. As provided in Sections 453(e)(2) and 453(g) of the SSA, the Secretary of HHS has the authority to determine what constitutes a reasonable amount for the reimbursement for disclosures under Section 303(h), SSA, and Section 3304(a)(16)(B), FUTA.

(d) *Payment of costs.* The costs to a State or State UC agency of making a disclosure of UC information, calculated in accordance with paragraph (c) of this section, must be paid by the recipient of the information or another source paying on behalf of the recipient, either in advance or by way of reimbursement. If the recipient is not a public official, such costs, except for good reason must be paid in advance. For the purposes of this paragraph (d), payment in advance means full payment of all costs before or at the time the disclosed information is given in hand or sent to the recipient. The requirement of payment of costs in this paragraph is met when a State UC agency has in place a reciprocal cost agreement or arrangement with the recipient. As used in this section, *reciprocal* means that the relative benefits received by each are approximately equal. Payment or reimbursement of costs must include any initial start-up costs associated with making the disclosure.

(e) *Program income.* Costs paid as required by this section, and any funds generated by the disclosure of UC information under this part, are program income and may be used only as permitted by 29 CFR 97.25(g) (on program income). Such income may not be used to benefit a State's general fund or other program.

§ 603.9 What safeguards and security requirements apply to disclosed information?

(a) *In general.* For disclosures of confidential UC information under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis); § 603.5(e) (to a public official), except as provided in paragraph (d) of this section; § 603.5(f) (to an agent or contractor of a public official); § 603.6(b)(1) through (4), (6), and (7)(i) (as required by Federal UC law); and § 603.22 (to a requesting agency for purposes of an IEVS), a State or State UC agency must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure, as provided in paragraphs (b) and (c) of this section, and must subject the recipient to penalties provided by the State law for unauthorized disclosure of confidential UC information.

(b) *Safeguards to be required of recipients.* (1) The State or State UC agency must:

(i) Require the recipient to use the disclosed information only for purposes authorized by law and consistent with an agreement that meets the requirements of § 603.10;

(ii) Require the recipient to store the disclosed information in a place physically secure from access by unauthorized persons;

(iii) Require the recipient to store and process disclosed information maintained in electronic format, such as magnetic tapes or discs, in such a way that unauthorized persons cannot obtain the information by any means;

(iv) Require the recipient to undertake precautions to ensure that only authorized personnel are given access to disclosed information stored in computer systems;

(v) Require each recipient agency or entity to:

(A) Instruct all personnel having access to the disclosed information about confidentiality requirements, the requirements of this subpart B, and the sanctions specified in the State law for unauthorized disclosure of information, and

(B) Sign an acknowledgment that all personnel having access to the disclosed information have been instructed in accordance with paragraph (b)(1)(v)(A) of this section and will adhere to the State's or State UC agency's confidentiality requirements and procedures which are consistent with this subpart B and the agreement required by § 603.10, and agreeing to report any infraction of these rules to the State UC agency fully and promptly,

(vi) Require the recipient to dispose of information disclosed or obtained, and any copies thereof made by the recipient agency, entity, or contractor, after the purpose for which the information is disclosed is served, except for disclosed information possessed by any court. Disposal means return of the information to the disclosing State or State UC agency or destruction of the information, as directed by the State or State UC agency. Disposal includes deletion of personal identifiers by the State or State UC agency in lieu of destruction. In any case, the information disclosed must not be retained with personal identifiers for longer than such period of time as the State or State UC agency deems appropriate on a case-by-case basis; and

(vii) Maintain a system sufficient to allow an audit of compliance with the requirements of this part.

(2) In the case of disclosures made under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis), the State or State UC agency must also—

(i) Periodically audit a sample of transactions accessing information disclosed under that section to assure that the entity receiving disclosed information has on file a written release authorizing each access. The audit must ensure that the information is not being used for any unauthorized purpose;

(ii) Ensure that all employees of entities receiving access to information disclosed under § 603.5(d)(2) are subject to the same confidentiality requirements, and State criminal penalties for violation of those requirements, as are employees of the State UC agency.

(c) *Redisclosure of confidential UC information.* (1) A State or State UC agency may authorize any recipient of confidential UC information under paragraph (a) of this section to redisclose information only as follows:

(i) To the individual or employer who is the subject of the information;

(ii) To an attorney or other duly authorized agent representing the individual or employer;

(iii) In any civil or criminal proceedings for or on behalf of a recipient agency or entity;

(iv) In response to a subpoena only as provided in § 603.7;

(v) To an agent or contractor of a public official only if the person redisclosing is a public official, if the redisclosure is authorized by the State

law, and if the public official retains responsibility for the uses of the confidential UC information by the agent or contractor;

(vi) From one public official to another if the redisclosure is authorized by the State law;

(vii) When so authorized by Section 303(e)(5), SSA, (redisclosure of wage information by a State or local child support enforcement agency to an agent under contract with such agency for purposes of carrying out child support enforcement) and by State law; or

(viii) When specifically authorized by a written release that meets the requirements of § 603.5(d) (to a third party with informed consent).

(2) Information redisclosed under paragraphs (c)(1)(v) and (vi) of this section must be subject to the safeguards in paragraph (b) of this section.

(d) The requirements of this section do not apply to disclosures of UC information to a Federal agency which the Department has determined, by notice published in the **Federal Register**, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1), SSA.

§ 603.10 What are the requirements for agreements?

(a) *Requirements.* (1) For disclosures of confidential UC information under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis); § 603.5(e) (to a public official), except as provided in paragraph (d) of this section; § 603.5(f) (to an agent or contractor of a public official); § 603.6(b)(1) through (4), (6), and (7)(i) (as required by Federal UC law); and § 603.22 (to a requesting agency for purposes of an IEVS), a State or State UC agency must enter into a written, enforceable agreement with any agency or entity requesting disclosure(s) of such information. The agreement must be terminable if the State or State UC agency determines that the safeguards in the agreement are not adhered to.

(2) For disclosures referred to in § 603.5(f) (to an agent or contractor of a public official), the State or State UC agency must enter into a written, enforceable agreement with the public official on whose behalf the agent or contractor will obtain information. The agreement must hold the public official responsible for ensuring that the agent or contractor complies with the safeguards of § 603.9. The agreement must be terminable if the State or State UC agency determines that the safeguards in the agreement are not adhered to.

(b) *Contents of agreement.* (1) *In general.* Any agreement required by paragraph (a) of this section must include, but need not be limited to, the following terms and conditions:

(i) A description of the specific information to be furnished and the purposes for which the information is sought;

(ii) A statement that those who request or receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement;

(iii) The methods and timing of requests for information and responses to those requests, including the format to be used;

(iv) Provision for paying the State or State UC agency for any costs of furnishing information, as required by § 603.8 (on costs);

(v) Provision for safeguarding the information disclosed, as required by § 603.9 (on safeguards); and

(vi) Provision for on-site inspections of the agency, entity, or contractor, to assure that the requirements of the State's law and the agreement or contract required by this section are being met.

(2) In the case of disclosures under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis), the agreement required by paragraph (a) of this section must assure that the information will be accessed by only those entities with authorization under the individual's or employer's release, and that it may be used only for the specific purposes authorized in that release.

(c) *Breach of agreement.* (1) *In general.* If an agency, entity, or contractor, or any official, employee, or agent thereof, fails to comply with any provision of an agreement required by this section, including timely payment of the state's or state UC agency's costs billed to the agency, entity, or contractor, the agreement must be suspended, and further disclosure of information (including any disclosure being processed) to such agency, entity, or contractor is prohibited, until the State or State UC agency is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, the agreement must be canceled, and the agency, entity, or contractor must be required to surrender to the state or state UC agency all confidential UC information (and copies thereof) obtained under the agreement which has not previously been returned to the state or state UC agency, and any other information relevant to the agreement.

(2) *Enforcement.* In addition to the actions required to be taken by paragraph (c)(1) of this section, the state or state UC agency must undertake any other action under the agreement, or under any law of the State or of the United States, to enforce the agreement and secure satisfactory corrective action or surrender of the information, and must take other remedial actions permitted under State or Federal law to effect adherence to the requirements of this subpart B, including seeking damages, penalties, and restitution as permitted under such law for any charges to granted funds and all costs incurred by the state or the state UC agency in pursuing the breach of the agreement and enforcement as required by this paragraph (c).

(d) The requirements of this section do not apply to disclosures of UC information to a Federal agency which the Department has determined, by notice published in the **Federal Register**, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1), SSA, and an appropriate method of paying or reimbursing the State UC agency (which may involve a reciprocal cost arrangement) for costs involved in such disclosures. These determinations will be published in the **Federal Register**.

§ 603.11 How do States notify claimants and employers about the uses of their information?

(a) *Claimants.* Every claimant for compensation must be notified, at the time of application, and periodically thereafter, that confidential UC information pertaining to the claimant may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs. Notice on or attached to subsequent additional claims will satisfy the requirement for periodic notice thereafter.

(b) *Employers.* Every employer subject to a State's law must be notified that wage information and other confidential UC information may be requested and utilized for other governmental purposes, including, but not limited to, verification of an individual's eligibility for other government programs.

§ 603.12 How are the requirements of this part enforced?

(a) *Resolving conformity and compliance issues.* For the purposes of resolving issues of conformity and substantial compliance with the requirements set forth in subparts B and C, the provisions of 20 CFR 601.5(b) (informal discussions with the

Department of Labor to resolve conformity and substantial compliance issues), and 20 CFR 601.5(d) (Secretary of Labor's hearing and decision on conformity and substantial compliance) apply.

(b) *Conformity and substantial compliance.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency of a State, finds that the State law fails to conform, or that the State or State UC agency fails to comply substantially, with:

(1) The requirements of Title III, SSA, implemented in subparts B and C of this part, the Secretary of Labor shall notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Department of Labor shall make no further payments to such State.

(2) The FUTA requirements implemented in this subpart B, the Secretary of Labor shall make no certification under that section to the Secretary of the Treasury for such State as of October 31 of the 12-month period for which such finding is made.

Subpart C—Mandatory Disclosure for Income and Eligibility Verification System (IEVS)

§ 603.20 What is the purpose and scope of this subpart?

(a) *Purpose.* Subpart C implements Section 303(f), SSA. Section 303(f) requires States to have in effect an income and eligibility verification system, which meets the requirements of Section 1137, SSA, under which information is requested and exchanged for the purpose of verifying eligibility for, and the amount of, benefits available under several federally assisted programs, including the Federal-State UC program.

(b) *Scope.* This subpart C applies only to a State UC agency.

Note to paragraph (b): Although not implemented in this part 603, Section 1137(a)(1), SSA, provides that each State must require claimants for compensation to furnish to the State UC agency their social security account numbers, as a condition of eligibility for compensation, and further requires States to utilize such account numbers in the administration of the State UC laws. Section 1137(a)(3), SSA, further provides that employers must make quarterly wage reports to a State UC agency, or an alternative agency, for use in verifying eligibility for, and the amount of, benefits. Section 1137(d)(1), SSA, provides that each State must require claimants for compensation, as a condition of eligibility, to declare in writing, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, that the individual is in a satisfactory immigration status. Other provisions of Section 1137(d), SSA, not implemented in this regulation require the States to obtain, and individuals to furnish, information which shows immigration status, and require the States to verify immigration status with the Bureau of Citizenship and Immigration Services.

§ 603.21 What is a requesting agency?

For the purposes of this subpart C, *requesting agency* means:

(a) *Temporary Assistance to Needy Families Agency*—Any State or local agency charged with the responsibility of administering a program funded under part A of Title IV of the SSA.

(b) *Medicaid Agency*—Any State or local agency charged with the responsibility of administering the provisions of the Medicaid program under a State plan approved under Title XIX of the SSA.

(c) *Food Stamp Agency*—Any State or local agency charged with the responsibility of administering the provisions of the Food Stamp Program under the Food Stamp Act of 1977.

(d) *Other SSA Programs Agency*—Any State or local agency charged with the responsibility of administering a program under a State plan approved under Title I, X, XIV, or XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the SSA.

(e) *Child Support Enforcement Agency*—Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of Title IV of the SSA.

(f) *Social Security Administration*—Commissioner of the Social Security Administration in establishing or verifying eligibility or benefit amounts under Titles II (Old-Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the SSA.

§ 603.22 What information must State UC agencies disclose for purposes of an IEVS?

(a) *Disclosure of information.* Each State UC agency must disclose, upon request, to any requesting agency, as defined in § 603.21, that has entered into an agreement required by § 603.10, wage information (as defined at § 603.2(k)) and claim information (as defined at § 603.2(a)) contained in the records of such State UC agency.

(b) *Format.* The State UC agency must adhere to standardized formats established by the Secretary of HHS (in consultation with the Secretary of Agriculture) and set forth in 42 CFR 435.960 (concerning standardized formats for furnishing and obtaining information to verify income and eligibility).

§ 603.23 What information must State UC agencies obtain from other agencies, and crossmatch with wage information, for purposes of an IEVS?

(a) *Crossmatch with information from requesting agencies.* Each State UC agency must obtain such information from the Social Security Administration and any requesting agency as may be needed in verifying eligibility for, and the amount of, compensation payable under the State UC law.

(b) *Crossmatch of wage and benefit information.* The State UC agency must crossmatch quarterly wage information with UC payment information to the extent that such information is likely, as determined by the Secretary of Labor, to be productive in identifying ineligibility for benefits and preventing or discovering incorrect payments.

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Federal Register

Wednesday,
September 27, 2006

Part IX

The President

Proclamation 8056—Family Day, 2006

Federal Register
Vol. 71, No. 187
Wednesday, September 27, 2006

Presidential Documents

Title 3—

The President

Proclamation 8056 of September 22, 2006

Family Day, 2006

By The President Of The United States of America

A Proclamation

Families instill values, shape character, and are the foundation of a hopeful society. On Family Day, we celebrate the rich traditions of family life and emphasize the importance of stable and loving relationships between children and parents.

Families are a source of inspiration and strength, and they provide hope and solace in the face of adversity. Children especially benefit from the bonds of family. During critical times in children's lives, family members encourage them to aim high and achieve their dreams, herald their successes, and promote positive behavior. Through their guidance and support, family members prepare young people for the challenges and opportunities ahead.

Parents, grandparents, aunts, uncles, and other caregivers are the first line of defense in helping young people avoid the dangers and temptations they face each day. By being attentive to children's activities and choices, families can help young people grow into successful adults.

My Administration remains committed to strengthening American families. We are working to protect the institution of marriage, promote responsible fatherhood, encourage parents to be involved in the education of their children, and provide every child with the opportunity to learn. By helping America's families thrive, we can build a brighter future for our country and give our young people the foundation they need to make good choices and build lives of purpose.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 25, 2006, as Family Day. I call on the people of the United States to observe this day by reflecting on the blessings of family and participating in family activities that strengthen relationships between children and parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

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LIST OF PUBLIC LAWS

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YouthBuild Transfer Act (Sept. 22, 2006; 120 Stat. 1173)

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