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

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

WHEN: Tuesday, February 7, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register
Vol. 71, No. 9
Friday, January 13, 2006

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
400 2135

Proposed Rules:
56 2168
70 2168

9 CFR
391 2135
590 2135
592 2135

14 CFR
23 2143
71 2145
73 2146

20 CFR
404 2312

21 CFR
510 2147

Proposed Rules:
310 2309

24 CFR

Proposed Rules:
1000 2176

25 CFR
243 2426

26 CFR
20 2147

29 CFR
4022 2147
4044 (2 documents) 2147, 2148

31 CFR
215 2149

33 CFR
117 (2 documents) 2151
165 2152

Proposed Rules:
117 2176

40 CFR

Proposed Rules:
52 2177

46 CFR
10 2154

47 CFR
1 2167

48 CFR
2401 2432
2402 2432
2406 2432
2408 2432
2409 2432
2411 2432
2413 2432
2415 2432
2416 2432
2419 2432
2422 2432
2426 2432
2432 2432
2437 2432
2442 2432
2446 2432
2448 2432
2452 2432

Proposed Rules:
Ch. 8 2342
2404 2444
2408 2444
2415 2444
2437 2444
2439 2444
2452 2444

Rules and Regulations

Federal Register
Vol. 71, No. 9
Friday, January 13, 2006

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: In an interim rule published in the **Federal Register** on December 21, 1998, the Federal Crop Insurance Corporation (FCIC) amended the General Administrative Regulations by adding a new subpart X to implement the statutory mandates of section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act). The rule provided procedures for responding to requests for final agency determinations regarding any provision of the Federal Crop Insurance Act (Act) or any regulation promulgated thereunder. The interim rule was made final on September 16, 1999. This correction is needed to correct the facsimile number and electronic mail address provided for requester submissions for final agency determinations.

DATES: This rule is effective January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Heyward Baker, Director, Risk Management Services Division, Risk Management Agency, United States Department of Agriculture, Stop Code 0803, 1400 Independence Avenue, SW., Washington, DC 20250–0803, telephone (202) 720–4232.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 400

General administrative regulations; Interpretations of statutory and regulatory provisions.

Need for Correction

■ As currently published, 7 CFR 400.767 contains outdated contact information. Accordingly, 7 CFR part 400 is corrected by making the following amendment:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart X—Interpretations of Statutory and Regulatory Provisions

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Amend § 400.767 by revising paragraph (a)(1) to read as follows:

§ 400.767 Requester obligations.

* * * * *

(a) * * *

(1) Be submitted:

(i) In writing by certified mail, to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250–0801;

(ii) By facsimile at (202) 690–3604; or

(iii) By electronic mail at *RMA.Mail@rma.usda.gov*;

* * * * * *

Signed in Washington, DC, on January 4, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–269 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No. 03–027F; FDMS Docket Number FSIS–2005–0025]

RIN 0583–AD12

Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Years 2006–2008

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is changing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection, identification, and certification services; overtime and holiday inspection services; and laboratory services. The Agency is raising these fees to reflect, among other factors, national and locality pay increases for Federal employees and inflation. In the past, FSIS has amended its regulations on an annual basis. With this regulation, FSIS is providing for three annual fee increases. This will provide the meat, poultry, and egg industries with more timely cost information. The Agency is also increasing the annual fee for its Accredited Laboratory Program.

DATES: Effective February 13, 2006.

FOR FURTHER INFORMATION CONTACT: For further information contact Deborah Patrick, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, 2154 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–3368, fax (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments, and meat and poultry processed at official establishments. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processed at official plants. FSIS provides mandatory inspection services at official establishments and plants and bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

The Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*), authorizes the provision of a variety of voluntary services. FSIS provides a range of voluntary inspection, certification, and identification services under the AMA to assist in the orderly marketing of various animal products and

byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of the voluntary inspection, certification and identification services it provides.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program; such accreditation allows labs to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification and certification services; laboratory services; and laboratory accreditation. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the past, FSIS has amended its regulations on an annual basis to change the fees it charges. Because of the length of the rulemaking process, the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees. As a result, the Agency is unable to recover the full cost of voluntary inspection, identification and certification services, overtime and holiday inspection services, laboratory services, and laboratory accreditation in a timely manner.

With this rulemaking, the Agency will amend its regulations to provide for three annual fee increases in one action. These increases are based on criteria established by the Agency to determine the needed fee increases on a multi-year basis. The Agency will continue to perform a yearly cost analysis to determine whether the fees established are adequate to recover the costs of the provided services. The Agency will initiate another rulemaking to adjust any fee established if, as a result of the cost analysis, the Agency determines that a fee established either will exceed the Agency's costs to provide a service or does not adequately cover the Agency's costs of providing the services. In the Agency's analysis of projected costs set forth in Tables 2 through 4, the agency has identified the bases for the increases in the cost of voluntary base time inspection, certification and identification services, overtime and holiday inspection services, and laboratory services for fiscal year 2006 through fiscal year 2008. FSIS, in July 2005, had proposed fee increases for FYs 2005 through 2008. Since FY 2005 has passed, this rule addresses fees only for FYs 2006 through 2008.

The Agency is increasing the annual fee for participants in the Accredited Laboratory Program from the current $1,500 to the figures listed in Table 5 for FY 2006 through FY 2008 because the program costs for this service has increased and will continue to increase, and because previously accumulated funds that have been used to pay for accredited laboratory program costs have decreased. The reasons for the increases in the laboratory accreditation fees are more fully discussed below in the section entitled "Economic Effects of Accredited Laboratory Program."

FSIS calculated its actual costs for fiscal years 2004 and 2005 and its projected increases in salaries and inflation in fiscal years 2006 through 2008. The following estimates are based on the Office of Management and Budget's Presidential Economic Assumptions for FY 2005 and the out years that were available at the time the proposed rule was published. The average pay raise for Federal employees in 2004 and 2005, which reflects both national cost of living increases and locality differentials, was 4.1 percent effective January 2004 and 3.5% effective January 2005. The average combined national and locality pay raise is estimated to be 2.3% for fiscal years 2006, 2007, and 2008. Inflation for fiscal year 2005 was 2.0%. Inflation for fiscal year 2006 is estimated to be 2.0%. Inflation for fiscal year 2007 is estimated to be 2.1%. Inflation for fiscal year 2008 is estimated to be 2.1%. The Agency will initiate another rulemaking to adjust any fee established, if estimated increases for pay and inflation do not adequately cover the Agency's costs of providing the services.

The cost of providing inspection services includes both direct and overhead costs. Overhead costs include the cost of support activities such as program and agency overhead costs. Overhead expenditures are allocated across the agency for each direct hour of inspection. Direct costs include the cost of salaries, employee benefits, and travel. Because of improvements in accessing data from the accounting system, the Agency has been able to estimate the employee benefits ascribable to overtime work and has included these in the fee calculations.

Section 10703 of the 2002 Farm Bill authorized the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from the Fair Labor Standards Act (i.e. veterinarians) that work in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. FSIS has adjusted its overtime fees to reflect these costs. Previously, veterinarians were limited to the time and a half rate paid to employees at grade level GS–10, step 1.

The current and future fees for holiday, overtime, and voluntary inspection services and for laboratory services are listed by type of service in Table 1. The first increase, from the current rate to the 2006 rate, is larger than the subsequent increases because this is the first rate increase since June 29, 2003. Therefore, it includes the increases in salaries and inflation that have occurred since that date.

TABLE 1.—CURRENT AND NEW INSPECTION FEES (PER HOUR PER EMPLOYEE) BY TYPE OF INSPECTION SERVICE

Service	Current rate	2006 rate	2007 rate	2008 rate
Base time	$43.64	$47.79	$48.84	$49.93
Overtime & holiday	50.04	56.40	57.65	58.93
Laboratory	61.80	67.83	69.31	70.82

The differing proposed fee increases for each aforementioned type of service are the result of the different amounts that it costs FSIS to provide these three types of services. The differences in costs stem from various factors,

including the different salary levels of the program employees who perform the services. See Table 2 through Table 4.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2006

Base Time	
Actual 2002 Salaries	$23.02
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	0.94
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	0.98
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × .075	0.65
FY 2006 Pay Adjustment = FY2005 salaries × 0.023	0.59
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation (2.0%) = [Current Rate ($43.64) + Adjustment for FY 2004 Inflation and Pay Increases ($1.76) – Actual 2002 Salaries ($23.02) + 2003 Pay Raise ($0.94) + Calendar 2004 Pay Raise ($0.98)] × 0.02	0.49
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($46.78) – FY 2005 Salaries ($25.60)] × 0.02	0.42
Total	47.79
Overtime and Holiday Inspection Services	
Actual 2002 Salaries	30.72
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	1.26
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	1.31
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × 0.75	0.87
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023	0.79
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation (2.0%) = [Current Rate ($50.04) + Adjustment for FY 2004 Inflation and Pay Increases ($3.44) – Actual 2002 Salaries ($30.72) + 2003 Pay Raise ($1.26) + Calendar 2004 Pay Raise ($1.31)] × 0.02	0.51
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($55.19) – FY 2005 Salaries ($34.16)] × 0.02	0.42
Total	56.40
Laboratory Services	
Actual 2002 Salaries	24.71
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	1.01
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	1.05
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise Calendar 2004 Pay Raise) × 0.035 × 0.75	0.70
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023	0.63
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation (2.0%) = [Current Rate ($61.80) + Adjustment for FY 2004 Inflation and Pay Increases ($2.82) – Actual 2002 Salaries ($24.71) + 2003 Pay Raise ($1.01) + Calendar 2004 Pay Raise ($1.05)] × 0.02	0.84
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($66.42) – FY 2005 Salaries ($27.47)] × 0.02	0.78
Total	67.83

TABLE 3.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007

Base Time	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries ($23.02) + 2003 Pay Raise ($0.94) + Calendar 2004 Pay Raise ($0.98) + 2005 Pay Adjustment ($0.65)] + 2006 Pay Adjustment	$26.18
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.60
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($47.80) − FY 2006 Salaries ($26.18)] × 0.021	0.45
Total	48.84
Overtime and Holiday Inspection Services	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries ($30.72) + 2003 Pay Raise ($1.26) + Calendar 2004 Pay Raise ($1.31) + 2005 Pay Adjustment ($0.87)] + 2006 Pay Adjustment	34.95
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.80
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($56.40) − FY 2006 Salaries ($34.95)] × 0.021	0.45
Total	57.65
Laboratory Services	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries ($24.71) + 2003 Pay Raise ($1.01) + Calendar 2004 Pay Raise ($1.05) + 2005 Pay Adjustment ($0.70)] + 2006 Pay Adjustment	28.10
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.65
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($67.84) − FY 2006 Salaries ($28.11)] × 0.021	0.83
Total	69.31

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008

Base Time	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	$26.79
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.62
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($48.84) − FY 2007 Salaries ($26.79)] × 0.021	0.46
Total	49.93
Overtime and Holiday Inspection Services	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	35.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.82
Benefits	2.05
Time and a Half	2.78

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008—Continued

Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($57.65) − FY 2007 Salaries ($35.75)] × 0.021	0.46
Total	58.93
Laboratory Services	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	28.75
FY 2008 Pay Adjustment = FY 2007 salaries x 0.023	0.66
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation	0.83
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($69.32) − FY 2007 Salaries ($28.76)] × 0.021	0.85
Total	70.82

TABLE 5.—CALCULATIONS FOR ACCREDITED LABORATORY FEES FY 2006–2008

	FY 2006	FY 2007	FY 2008
Estimated Income	$442,389	$547,121	$593,521
Expense Estimates	545,268	579,100	609,188
New Accreditation Fee	4,000	4,500	4,500

The Agency must recover the actual cost of services covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's costs. FSIS announced in its July 20, 2005 proposed rule [70 FR 41635] the same fee changes provided in this final rule, except for laboratory accreditation, for which the fees have been reduced in this final rule. Thus, adequate notice has been given to affected parties.

These amendments will be effective 30 days after publication of this final rule in the **Federal Register**.

Proposed Rule and Comments

FSIS published a proposed rule on July 20, 2005 (70 FR 41635), stating that it was proposing changing fees for inspection services and laboratory accreditation for FYs 2005 through 2008. The Office of the Federal Register published an editorial correction on August 16, 2005 (70 FR 48238). The agency provided for a 30 day comment period, ending August 18, 2005. Since the proposed fees were not finalized during FY 2005 we are now finalizing fees for only FYs 2006 through 2008.

FSIS received 4 comments on the proposed accredited laboratory fee changes. FSIS also received 5 comments on the proposed inspection fee changes.

Accredited Lab Fee

Comment: All five comments on the Accredited Laboratory Program fee noted that the accreditation fee increase is very large, and all stated that the increase is a financial hardship on small laboratories. Several commenters stated that this fee increase will cause some laboratories to close. Several commenters also stated that the Accredited Laboratory Program fee increase will cause some small labs to not maintain their accreditation.

Response: FSIS stated in the proposed rule that the increase in the accredited laboratory fee was necessary because program costs have increased and will continue to increase, because previously accumulated funds that have been used to pay program costs have decreased and because of the costs of contracting out check samples, previously done in-house. FSIS recognized that the fee increase likely would cause some accredited laboratories to re-evaluate their participation in this voluntary program. FSIS stated that it anticipated that the accredited laboratory fee increase would result in some small laboratories not renewing their accreditation because it would no longer be cost effective for them to participate.

FSIS has, however, re-evaluated its proposed laboratory accreditation fees and estimated costs and its income from the Accredited Laboratory Program in light of the time that has passed since the fees and estimates were first prepared and thereafter, published in the proposal and has reduced the fees from those proposed, as indicated in Table 5.

Comment: One commenter suggested that FSIS and AMS combine their accreditation programs because the types of samples are identical.

Response: The services provided by the various agencies address matters appropriate to their respective missions. The rates that each agency charges for the services it provides must conform to its particular statutory authority, regulations, and administrative structure and requirements. FSIS must assess accreditation fees in a manner that is consistent with its current regulations and statutory mandate.

Comment: One commenter suggested that FSIS accept ISO 17025 certification in lieu of FSIS accreditation.

Response: International Standards Organization (ISO) accreditation is a third-party evaluation of laboratory

quality and capability. FSIS laboratories are themselves ISO accredited. FSIS does consider the applicable scope of a non-Federal laboratory's ISO accreditation when evaluating results supplied by such laboratories. The FSIS accredited laboratory program is a separate program established by regulation. ISO accreditation requires, but does not provide, proficiency testing. Such testing is a cornerstone of the FSIS program. Thus, there are differences between the two programs.

Comment: One commenter suggested that FSIS allow the fee to be paid in installments over the year.

Response: FSIS recognizes that a fee paid in installments might ease the burden on small laboratories. However, fees paid in installments could also increase administrative costs and further contribute to increases in fees. Permitting fees to be paid in installments, even as an option, would require a change in the current regulations for the program through a separate notice and comment rule-making. Nonetheless, FSIS will consider this comment along with other comments when it develops a proposed rule, which the agency hopes to publish in the near future, to amend parts of the accredited laboratory regulations.

Comment: One commenter requested that the fees not be increased for non-Federal Laboratories.

Response: The accredited laboratory program is a program only for non-Federal laboratories. In the time since the fee was last set on June 29, 2003, for the Accredited Laboratory Program, the reserve that provided a portion of the program's funding has been depleted, and costs to administer the program have increased. FSIS is required by statute to recover the costs of administering the accredited laboratory program and is, therefore, obligated to set the fees at a level that will meet that statutory mandate.

Overtime, Holiday and Voluntary Inspection Fees

Comment: Two commenters stated that the costs per pound of product for holiday and overtime inspection services to small and very small establishments are greater than the per pound costs to large establishments, and that small establishments cannot absorb these costs as easily as larger establishments.

Response: FSIS recognizes that the production quantities at some small and very small establishments are less than those of large establishments. FSIS also understands that at some small or very small establishments the cost per pound of product as a result of overtime fees will be higher than at a large establishment. However, FSIS also believes that no establishment, regardless of size, will choose to operate during overtime periods or on a holiday unless that establishment believes that it is cost effective to do so.

Comment: Two commenters opposed establishing fees for regular inspection.

Response: FSIS does not have the authority under the FMIA, the PPIA, or the EPIA to charge fees to recover the costs of inspection done during non-overtime and non-holiday time periods. Therefore, FSIS does not have any plans to establish fees for regular inspection.

Comment: Three commenters suggested that FSIS consider whether changes in the regulatory environment as a result of HACCP have resulted in improved productivity, and whether more efficient inspection would result in reduced inspection fees.

Response: Any cost savings that might be realized through more effective use of inspection resources in HACCP does not translate into lower expenses for overtime, holiday, or voluntary inspection services.

Comment: Two commenters expressed concern that establishing fees for several years at a time reduces public participation in FSIS' regulatory activities and creates the possibility that the agency will not readjust rates if costs are not in line with estimated future rates.

Response: The changes to overtime, holiday, and voluntary inspection fees are based on changes in the annual average wage increase for Federal employees and the inflation rate estimated by the Office of Management and Budget in its Presidential Economic Assumptions for FY 2005 and the out years. The OMB estimates of changes to federal salaries are projected for only 1 year at a time; FSIS has based all out year rates on best estimates. The OMB estimated inflation rates for 3 years; FSIS used best estimates for rates beyond that 3-year period.

FSIS is prohibited from setting fees at a level above that needed to recover costs and is required to set fees at a level that will recover its costs. FSIS will reassess the established fee rates on an annual basis and initiate a rulemaking to revise the fees should the Agency determine that the established rates either will exceed the Agency's costs to provide overtime, holiday, and voluntary inspection services or will not be adequate to cover the estimated expenses for the year. FSIS encourages all interested parties to monitor the semi-annual regulatory agenda to determine when FSIS initiates these actions. Petitions are also a vehicle available to members of the public who believe that FSIS is not abiding by its obligation to neither overcharge nor undercharge establishments for overtime, holiday and voluntary inspection services.

Comment: One commenter asked FSIS to clarify whether the amended fees for fiscal year 2005 will be retroactive.

Response: FSIS is not making the rates for fiscal year 2005 retroactive. FSIS proposed a rate for 2005 anticipating that the rule would be promulgated during fiscal year 2005. This rule was not promulgated prior to the end of fiscal year 2005, and FSIS will not collect any additional holiday, overtime, or voluntary inspection fees retroactively.

Comment: Two commenters raised questions about FSIS' inspection structure, such as the timing of tours of duty for FSIS inspectors, the use of overtime, and changes to inspection as a result of HACCP.

Response: These issues are not within the scope of this rulemaking and thus are not being addressed in this document.

Comment: One commenter suggested that by establishing fees on a multi-year basis, FSIS does not have any incentive to control costs.

Response: The costs that determine the level at which overtime, holiday, and voluntary inspection fees are set are not within FSIS' ability to control. Federal salaries, salary increases, employee benefit packages, the rate at which travel expenses are reimbursed, and inflation rates are the factors that comprise much of the proposed inspection rates. These factors are all established on a government-wide basis and are beyond FSIS' ability to control.

Comment: One commenter stated that a proposal to provide for four changes at one time is a marked change from previous years when the agency only proposed program fees for the upcoming year.

Response: FSIS as far back as July, 2000 (65 FR 45545) stated that it was exploring the possibility of proposing a three to five year plan of fee rate adjustment based on estimates of cost escalation. FSIS acknowledges that the proposing of fees for multiple years, rather than yearly, is a departure from its past practices. However, as FSIS stated in its proposal, its practice of amending fees on a yearly basis has in the past led to the Agency being unable to recover the full cost of the services it provides because the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees due to the length of the rulemaking process. To avoid this problem, FSIS

has now decided to amend its fees at one time for multiple years.

Comment: One commenter expressed concern that the agency is proposing fees to cover program costs associated with inflation, wages, and overhead four years in advance of realization of the actual costs.

Response: The fact that FSIS is establishing fees for multiple years in advance of the realization of actual costs should not be a concern. FSIS stated in the proposed rule that the proposed fees were based on estimates, that the Agency would review these fees on an annual basis and would adjust them, if necessary, to ensure that the fee ultimately set for a given year reflected the actual costs to the Agency to provide a service.

Executive Order 12866 and Regulatory Flexibility Act

Because this rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under EO 12866.

The Administrator, FSIS, has determined that this rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities. The inspection services provided under these fees are voluntary. Establishments and plants requesting these services are likely to have calculated that the revenues generated from additional production will exceed the incremental costs of the services. Similarly, laboratories will determine whether the additional revenue for services that require accreditation will exceed the costs of becoming accredited.

Economic Effects of Inspection and Laboratory Service Fees

As a result of the new base time, holiday and overtime, and laboratory service fees, the Agency expects to collect an estimated $136 million, $144 million, and $153 million in years 2006, 2007, and 2008 respectively, or a total of $433 million over the next three years to cover the cost of voluntary certification, identification, and inspection services; overtime and holiday inspection services; and laboratory services for meat, poultry, and egg products. By enacting a three year fee increase instead of a single year fee increase, the Agency is streamlining the rulemaking process to help ensure that the fee increases are effective at the beginning of each fiscal year. During the next three years, food safety will be maintained at the establishments affected by this rule as the Agency provides the services. The increased fees will cover inflation and national and locality pay raises but will not support any new budgetary initiative. The costs that industry would experience by the raise in fees are similar to other increases that the industry would experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2002 was about 85.7 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, July 17, 2003). The increase in cost per pound of product associated with the proposed fee increases is, in general, $.0002. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

Even though this increase in fees is negligible, the industry is likely to pass along a significant portion of the fee increases to consumers because of the inelastic nature of the demand curve facing consumers. Research has shown that consumers are unlikely to reduce demand significantly for meat, poultry, and egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., *A Complete System for Demand for Food.* USDA/ERS Technical Bulletin No. 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Economic Effects of Accredited Laboratory Program

As a result of the new Accredited Laboratory Program fees, the Agency expects to collect $442,389 in FY 2006, $547,121 in FY 2007, and $593,521 in FY 2008. The Accredited Laboratory Program is required to recover its operational costs through the fees required to be paid. The adjustments to the fees charged are designed to recover FSIS' costs for providing accreditation services, which include the maintenance of an adequate reserve. The amount of the accreditation fee established for each year is based on the number of expected new and renewal accreditations, the anticipated costs directly related to the accreditation process, and the estimated reserve from the previous year. The fees established are based on FSIS' best projections of what it will cost the Agency to provide accredited laboratory services in fiscal years 2006 through 2008.

The fee increases are necessary because the level of the program's reserve surplus that has in the past been used to offset the cost of the program has decreased below a one-year operating-cost level. A large portion of the fee increases are attributable to the contracting out of check samples, a task previously done in-house. As a result, FSIS needs to raise the fees it charges to offset the amount it no longer has from the reserve to carry out the program. FSIS also needs to raise its fees to cover its increased direct overhead costs, including those for salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve.

FSIS believes that it needs a yearly reserve of approximately $250,000 to maintain the program's continuity. This amount of reserve funds is needed to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year and to cover salaries and other operating expenses during the first two to three months of the fiscal year. Less than 5% of the program's income is received during the first two months of a fiscal year. Approximately 75% of the program's income is received in late December and early January; the remainder of the program's income is received about evenly across the rest of the fiscal year.

Maintaining an adequate reserve therefore is essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year. The amount of FSIS' reserve funds is taken into account when FSIS determines what its expenses will be for each year and in determining what its projected income will be for the next year. The current reserve is lower than what is ideally needed to ensure the continuity of the program. Therefore, FSIS has incorporated an increase in the reserve amount into its fee structure with the aim of achieving the ideal reserve amount by FY09.

FSIS anticipates that some laboratories will determine that it is not cost effective to maintain accreditation. As a result, revenue estimates assume a 10% reduction in the number of participants for each fiscal year. While lower participation reduces costs, the costs are spread over fewer laboratories. The fees, consequently, increase despite lower costs.

FSIS has addressed the comments it received about the proposed Accredited Laboratory Program fee increases. Since the issuance of the proposal, FSIS has re-evaluated its proposed laboratory accreditation fees and its estimation of the costs of the Accredited Laboratory

Program and the income it will have to carry out the program. Time has passed since the fees and estimates were first prepared and published in the proposal, and the current fiscal status of the program has changed. FSIS has incorporated certain additional cost-cutting measures in its Accredited Laboratory Program and has realized other savings since the proposal was published. As a result, the agency has modified its fee structure as indicated in Table 5. While the initial increase for FY06 to $4000, from the current fee of $1500, is still substantial, it is substantially less than the fee of $5200 proposed for FY06. The fee being established for FY07 and FY08 of $4500 is also substantially lower than the proposed fee of $5400 for FY07 and the proposed fee of $5600 for FY08. FSIS anticipates, based on its revised cost and income estimates, that the new fees will move the Accredited Laboratory Program to a sound financial footing.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Unfunded Mandate Analysis

Title II of the Unfunded Mandate 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 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 UMRA generally requires that the Department 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. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule except as discussed below. The administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge may be made of the application of the provisions of the proposed rule, as set forth in the aforementioned sections.

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 rule, FSIS will announce it online through the FSIS Web Page at *http://www.fsis.usda.gov/regulations_&_policies/2006_Interim_&_Final_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

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 our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

■ For the reasons set forth in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

■ 1. The authority citation for part 391 is revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 1622, 1627 and 2219a; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

■ 2. Sections 391.2, 391.3 and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $47.79 per hour per program employee in fiscal year 2006, $48.84 per hour per program employee in fiscal year 2007, and $49.93 per hour per program employee in fiscal year 2008.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $67.83 per hour per program employee in fiscal year 2006, $69.31 per hour per program employee in fiscal year 2007, and $70.82 per hour per program employee in fiscal year 2008.

■ 3. In § 391.5, paragraph (a) is revised to read as follows:

§ 391.5 Laboratory accreditation fee.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $4,000.00 for fiscal year 2006; $4,500.00 for fiscal year 2007; and $4,500.00 for fiscal year 2008.

* * * * *

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 4. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 5. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

■ 6. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 7. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 8. Sections 592.510, 592.520 and 592.530 are revised to read as follows:

§ 592.510 Base time rate.

The base time rate for voluntary inspection services for egg products is $47.79 per hour per program employee in fiscal year 2006, $48.84 per hour per program employee in fiscal year 2007, and $49.93 per hour per program employee in fiscal year 2008.

§ 592.520 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

§ 592.530 Holiday rate.

When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

Done in Washington, DC, on January 10, 2006.

Bryce Quick,

Deputy Administrator.

[FR Doc. 06–321 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE238, Special Condition 23–178–SC]

Special Conditions; The New Piper Aircraft, Inc.; PA–44–180; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The New Piper Aircraft, Inc., Vero Beach, Florida, for a type design change for the PA–44–180 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX(), manufactured by Avidyne Corporation, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 6, 2006. Comments must be received on or before February 13, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE238, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE238. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and

opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE238." The postcard will be date stamped and returned to the commenter.

Background

The New Piper Aircraft, Inc., Vero Beach, Florida, has made application to revise the type design of the PA–44–180 model airplane. The model is currently approved under the type certification basis listed on Type Certificate Data Sheets (TCDS) A19SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, The New Piper Aircraft, Inc., must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations identified on the appropriate TCDS. In addition, the type certification basis of the airplanes embodying this modification will include the additional certification basis for installation of the Avidyne Entegra EFIS is: *PA–44–180 model aircraft:* 14 CFR Part 23 regulations FAR 23.301, 23.337, 23.341, 23.473, 23.561, 23.607, 23.611, as amended by Amdt. 23–48; FAR 23.305, 23.397, 23.613, 23.773, 23.1525, 23.1549 as amended by Amdt. 23–45; FAR 23.777, 23.955, 23.1337 as amended by Amdt. 23–51; FAR 23.1303, 23.1307, 23.1309, 23.1311, 23.1321, 23.1323, 23.1329, 23.1351, 23.1353, 23.1359, 23.1361, 23.1365, 23.1431 as amended by Amdt. 23–49; FAR 23.1305 as amended by Amdt. 23–52; FAR 23.1322, 23.1331, 23.1357 as amended by Amdt. 23–43; FAR 23.1325, 23.1543, 23.1545, 23.1555, 23.1563, 23.1581, 23.1583, 23.1585 as amended by Amdt. 23–50; FAR 23.1523 as amended by Amdt. 23–34; FAR 23.1529 as amended by Amdt. 23–26; FAR 23.1501 and 23.1541 as amended by Amdt. 23–21; FAR 23.1327 as amended by Amdt. 23–20; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The New Piper Aircraft, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	Peak
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to New Piper PA–44–180 model airplanes.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for New Piper PA–44–180 model airplanes modified by installation of the factory optional Avidyne Entegra EFIS system.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 6, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–341 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 05–AWP–12]

Establishment of a Class E Enroute Domestic Airspace Area, San Louis Obispo, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws the direct final rule published in the **Federal Register** on November 14, 2005, (70 FR 69077). In that action, the FAA proposed to establish a Class E enroute domestic airspace west of San Luis Obispo, CA, to replace existing Class G uncontrolled airspace. The FAA has determined that the boundaries of this airspace will be revised and another direct final rule resubmitted for publication.

DATES: The direct final rule published November 14, 2005 (70 FR 69077) is withdrawn as of January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION: On November 14, 2005, a direct final rule was published in the **Federal Register** to establish a Class E enroute domestic airspace area west of San Luis Obispo to contain aircraft while in Instrument Flight Rules (IFR) conditions and under control of Santa Barbara Terminal Radar Approach Control (TRACON). On November 2, 2005, airspace was transferred from Los Angeles Air Route Traffic Control Center (ARTCC) to Santa Barbara TRACON. In order to provide

positive control of aircraft in this area, the airspace was to be designated as controlled airspace. Further review determined that a change in boundaries is required to provide the necessary air traffic control procedures for this airspace, therefore the FAA will withdraw the proposed action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the direct final rule for Airspace Docket No. 05–AWP–12, as published in the **Federal Register** on November 14, 2005 (70 FR 69077), is hereby withdrawn.

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

Issued in Los Angeles, California, on December 20, 2005.

Anthony DiBernardo,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–202 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–19051; Airspace Docket No. 04–AWP–6]

RIN 2120–AA66

Establishment of Restricted Area 2507E; Chocolate Mountains, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area 2507E (R–2507E), Chocolate Mountains, CA, as part of a U.S Marine Corps (USMC) training initiative. The USMC requested the establishment of this airspace to support its Close Air Support Mission (CAS) within the Chocolate Mountains Range. The new restricted airspace will be used to conduct realistic aircrew training and to maintain the level of proficiency in modern tactics that is required for combat readiness.

DATES: *Effective Dates:* 0901 UTC, April 13, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On October 1, 2004, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish R–2507E Chocolate Mountains, CA (69 FR 58860). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received in support of the proposal, which also expressed concern about low level flights over the Cabeza Prieta National Wildlife Refuge. It is the policy of the USMC to limit low level flight over National Wildlife Refuges to the maximum extent possible. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by establishing R–2507E, Chocolate Mountains, CA, as part of a USMC training initiative. The USMC requested the establishment of this airspace to support its CAS within the Chocolate Mountains Range. The area, R–2507E, will be contiguous with the existing R–2507S, extending from the surface to flight level (FL) 400 and will encompass a portion of the Abel North MOA. The proposed time of designation will be from 0700 to 2300 hours daily. Since the Chocolate Mountains Range complex is joint-use airspace, the restricted areas will only be scheduled when needed for training, and will be available for transit by non-participating aircraft when not in use.

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

Environmental

Environmental Review Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40CFR Parts 1500–1508), and other applicable law. The FAA conducted an independent review of the USMC Yuma Training Range Complex Final Environmental Impact Statement (FEIS) January 1997, the Yuma Training Range Complex, Final Supplemental Environmental Impact Statement (SEIS) September 2001 for the purpose of establishment of R–2507E, and its subsequent charting. The FAA adopted the FEIS, the SEIS, and prepared a Record of Decision (ROD) dated December 2005. The ROD analyzed this modification of Special Use Airspace at the Yuma Training Range Complex. This final rule, which establishes a new restricted area, will not result in significant environmental impacts.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2507E Chocolate Mountains, CA [New]

Boundaries. Beginning at lat. 33°17′06″ N., long. 115°04′35″W., to lat. 33°14′26″ N., long. 114°59′00″W., to lat. 33°14′26″ N., long. 114°56′35″W., to lat. 33°10′21″ N., long. 114°56′26″W., to lat. 33°08′45″ N., long. 114°56′43″W.

Designated altitudes. Surface to FL 400.

Time of designation. 0700–2300 local daily; other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. Commanding Officer, USMC Air Station, Yuma, AZ.

* * * * *

Issued in Washington, DC, on January 6, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–345 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 2005, on page 46, in § 510.600, paragraph (c)(1), the entry for "Intervet, Inc." is corrected by adding "Millsboro, DE 19966" at the end of the entry.

[FR Doc. 06–55502 Filed 1–12–06; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

Estate Tax; Estates of Decedents Dying After August 16, 1954

CFR Correction

In Title 26 of the Code of Federal Regulations, parts 2 to 29, revised as of April 1, 2005, on page 269, in § 20.2031–2, the equation in paragraph (b)(3), *Example (2)* is corrected to read as follows:

§ 20.2031–2 Valuation of stocks and bonds.

* * * * *

(b) * * *

(3) * * *

Example 2.

* * * * *

$$\frac{(3\times15)+(2\times10)\cdot}{5}$$

[FR Doc. 06–55501 Filed 1–12–06; 8:45 am]
BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2006. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2006; (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2006, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.60 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2006) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at *http://www.pbgc.gov/docs/05–23554.pdf*. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for January 2006.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2006, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 148, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
148	2–1–06	3–1–06	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 148, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
148	2–1–06	3–1–06	2.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for February 2006, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
February 2006	.0560	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of January 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–329 Filed 1–12–06; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Benefits Payable In Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: The Pension Benefit Guaranty Corporation published in the **Federal Register** of December 15, 2005, a final rule amending its regulation on Allocation of Assets in Single-Employer Plans to adopt interest assumptions for plans with valuation dates in January 2006. This document corrects an inadvertent error in that final rule.

DATES: Effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TYY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation published a document in the December 15, 2005, **Federal Register** (70 FR 74200), amending its regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) to adopt

interest assumptions for plans with valuation dates in January 2006. This documents corrects an inadvertent error in the January 2006 entry to Appendix B to part 4044. (There was no corresponding error in the preamble to the document.)

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ Accordingly 29 CFR part 4044 is corrected by making the following correcting amendments:

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, correct the entry for January 2006, as set forth below, To read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
January 2006	.0570	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of January 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–330 Filed 1–12–06; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 215

RIN 1510–AB06

Withholding of District of Columbia, State, City and County Income or Employment Taxes by Federal Agencies

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service is issuing this final rule which governs the withholding of District of Columbia, State, City and County income or employment taxes by Federal agencies. This rule revises the office within the Department of the Treasury which will correspond with government entities requesting that the Secretary of the Treasury enter into an agreement with them for the mandatory withholding of the requesting entity's taxes from Federal employees' salaries. The revision is necessary in order to streamline the process by which Treasury receives such requests and responds to them. The revision also updates the regulation by removing outdated provisions no longer applicable.

EFFECTIVE DATE: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: James E. Knox, Financial Program Specialist, at (202) 874–6809; or Marc I. Seldin, Senior Attorney, at (202) 874–6863.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 5 U.S.C. 5516, 5 U.S.C. 5517, 5 U.S.C. 5520 and Executive Order 11997, the Secretary of the Treasury enters into withholding agreements with the District of Columbia, States, cities, and counties for the mandatory withholding of a jurisdiction's taxes from the salaries of Federal employees within a taxing jurisdiction. When a taxing jurisdiction wishes to enter into such a withholding agreement, it forwards a request to the Department of the Treasury (Treasury). Treasury reviews the request, determines whether it meets the statutory and regulatory requirements for such an agreement, and notifies the requesting taxing jurisdiction of Treasury's determination as to whether it will enter into a withholding agreement with the requesting taxing jurisdiction. Currently, Treasury's governing regulation, 31 CFR part 215, lists Treasury's Fiscal Assistant Secretary as the point of contact for such requests. Following receipt of such requests by that office, the requests are forwarded to Treasury's Financial Management Service (FMS), to which the Fiscal Assistant Secretary has delegated the authority to enter into such withholding agreements. In order to streamline the process by which Treasury receives and responds to requests to enter into withholding agreements, the revised rule amends § 215.4 (which is redesignated as § 215.3, as described below) to provide that requesting taxing jurisdictions will forward their requests directly to FMS, and FMS will respond to the requests. The revised rule also makes a conforming change to a definition set forth in § 215.2(l).

Additionally, the revised rule updates §§ 215.1, 215.3, 215.4, and 215.5 by deleting several outdated provisions which are no longer effective. Section 215.3, codified on July 1, 1977 and effective on that date, provided actions which could be taken within 90 days of that date. Section 215.5 provided details on the actions set forth in § 215.3. The last sentence of § 215.1 referenced the actions described in §§ 215.3 and 215.5. Since the time for any such actions has long since expired, and for clarity, the revised rule deletes outdated provisions from §§ 215.1 and 215.3, deletes § 215.5 in its entirety (as it is no longer applicable), and makes conforming changes to § 215.4. For convenience to the reader, § 215.3 and § 215.4 are redesignated as § 215.4 and § 215.3, respectively. As a result of § 215.5 being deleted, subsequent sections § 215.6 through § 215.13 are redesignated as § 215.5 through § 215.12. In addition, the current rule references a "Standard Agreement" for withholding, and a long-since expired opportunity in 1977 for requesting entities to request deviations from the Standard Agreement. Since there is only one withholding agreement which requesting entities may seek currently, for clarity, the term "Standard Agreement" has been replaced by the term "Withholding Agreement."

The revised rule also updates two definitions in § 215.2 in order to conform to revisions made to an underlying statute, 5 U.S.C. 5517, since the rule was last revised. The definition of "State" now specifically includes a territory, possession, or commonwealth of the United States. The citations referenced in the definition of "Members of the Armed Forces" are also updated. Neither of these

conforming changes revises current law, as they merely conform the rule to the underlying law. The revised rule also makes nomenclature revisions to the authority citation.

Regulatory Analyses

This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Because this regulation merely affects internal agency organization, procedure and practice, and does not substantively change the current rule, no notice of proposed rulemaking is required by 5 U.S.C. 553.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This final rule is being issued effective upon publication because it merely affects internal agency organization, procedure and practice, and does not substantively change the current rule. Consequently, there is no requirement under 5 U.S.C. 553(d) for a 30-day or more period between the publication date and effective date of this rule.

List of Subjects in 31 CFR Part 215

State and local tax withholding, Federal employees.

Table of Contents, Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 215 is amended as follows:

PART 215—WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES BY FEDERAL AGENCIES

■ 1. The table of contents for part 215 is revised to read as follows:

Authority: 5 U.S.C. 5516, 5517, 5520; E.O. 11997, 42 FR 31759.

■ 2. Revise § 215.1 to read as follows:

§ 215.1 Scope of part.

This part relates to agreements between the Secretary of the Treasury and States (including the District of Columbia), cities or counties for withholding of State, city or county income or employment taxes from the compensation of civilian Federal employees, and for the withholding of State income taxes from the compensation of members of the Armed Forces. Subpart A contains general information and definitions. Subpart B prescribes the procedures to be followed in entering into an agreement for the withholding of State, city or county income or employment taxes. Subpart C is the Withholding Agreement which the Secretary will enter into with any State, city or county which qualifies to have the tax withheld.

■ 3. Amend § 215.2 to revise paragraphs (h)(2)(i), (l), and (m) to read as follows:

§ 215.2 Definitions.

* * * * *

(h) * * *

(2) * * *

(i) *Members of the Armed Forces* means (1) individuals in active duty status (as defined in 10 U.S.C. 101(d)(1)) in regular and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and (2) members of the National Guard while participating in exercises or performing duty under 32 U.S.C. 502 and members of the Ready Reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 U.S.C. 10147.

* * * * *

(l) *Secretary* means Secretary of the Treasury or his designee.

(m) *State* means a State, territory, possession, or commonwealth of the United States, or the District of Columbia.

* * * * *

■ 4. Revise § 215.3 to read as follows:

§ 215.3 Procedures for entering into a Withholding Agreement.

(a) Subpart C of this part is the Withholding Agreement which the Secretary will enter into with a State, city or county. A State, city or county which does not have an existing withholding agreement with the Secretary and wishes to enter into such an agreement shall indicate in a letter its consent to be bound by the provisions of Subpart C. The letter shall be sent to the Secretary by addressing the request to: Assistant Commissioner, Federal Finance, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227. The letter shall be signed by an officer authorized to bind contractually the State, city or county. Copies of all applicable State laws, city or county ordinances and implementing regulations, instructions, and forms shall be enclosed. The letter shall also indicate the title and address of the official whom Federal agencies may contact to obtain forms and other information necessary to implement withholding.

(b) Within 120 days of the receipt of the letter from the State, city or county official, the Secretary will, by letter, notify the State, city or county:

(1) That a Withholding Agreement has been entered into as of the date of the Secretary's letter, or

(2) That a Withholding Agreement cannot be entered into with the State, city or county and the reason for that determination.

(c) The withholding of the State, city or county income or employment tax shall commence within 90 days after the effective date of the agreement.

■ 5. Revise § 215.4 to read as follows:

§ 215.4 Relationship of Withholding Agreement to prior agreements.

Jurisdictions which requested from Treasury an agreement other than the Withholding Agreement set forth in Subpart C (formerly known as the Standard Agreement) within 90 days after July 1, 1977, which request Treasury subsequently approved, will continue to be governed by such agreement. For all other jurisdictions, the Withholding Agreement set forth in Subpart C replaced all prior agreements between the Secretary and a taxing jurisdiction for the withholding of income or employment taxes from the compensation of Federal employees, and any jurisdiction which was a party to a prior agreement is presumed to have consented to be bound by the Withholding Agreement set forth in Subpart C.

§ 215.5 [Removed]

§§ 215.6–215.13 [Redesignated as §§ 215.5–215.12]

■ 6. Remove § 215.5 and redesignate §§ 215.6 through 215.13 as §§ 215.5 through 215.12, respectively.

■ 7. Revise the heading for Subpart C to read:

Subpart C—Withholding Agreement

■ 8. In newly redesignated § 215.5, remove the words "Standard Agreement" and add, in their place, the words "Withholding Agreement".

Dated: January 4, 2006.

Richard L. Gregg,

Commissioner.

[FR Doc. 06–238 Filed 1–12–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–001]

RIN 1625–AA–09

Drawbridge Operation Regulations; Shark River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the W–43 (Ocean Avenue) Bridge, at mile 0.1, over Shark River Inlet at Monmouth County, New Jersey. To facilitate removal and replacement of the mechanical systems of the lift spans, the temporary deviation would allow partial openings of the drawbridge.

DATES: This deviation is effective from 7 a.m. on January 9, 2006, to 3 p.m. on February 19, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6629. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The W–43 (Ocean Avenue) Bridge has a vertical clearance in the closed position of 15 feet at mean high water and 18 feet at mean low water.

The HNTB Corporation on behalf of Monmouth County, which owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the general operating regulations set out in 33 CFR 117.5, to facilitate repairs.

During this temporary deviation, the repairs will require immobilizing half of the draw span. From 7 a.m. on January 9, 2006, until and including 3 p.m. on February 19, 2006, single-leaf openings will be provided on signal.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 6, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 06–331 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–041]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Interim Rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the period for public comment concerning drawbridge operation regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA, because the Dominion Boulevard (U.S. 17) Bridge is utilized frequently and members of the public have communicated to the Coast Guard that they would like to make additional comments.

DATES: Comments must reach the Coast Guard on or before March 10, 2006.

ADDRESSES: Identify your comments and related material by the docket number for this rulemaking [CGD05–05–041]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to Commander (obr), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704.

(2) By hand delivery to Commander (obr), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

(3) By fax to the Bridge Administration office at (757) 398–6334.

Commander, Fifth Coast Guard District (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at the address listed above between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Waverly W. Gregory, Jr., Commander (obr) Fifth Coast Guard District, by telephone at (757) 398–6222, or by e-mail at *waverly.w.gregory@uscg.mil.* For questions on viewing or submitting material to the docket, contact Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 10, 2005, the Coast Guard published a Notice of Proposed Rulemaking (70 FR 24492). That document contains a detailed history of the Coast Guard's previous regulatory efforts regarding the Dominion Boulevard (U.S. 17) Bridge.

On August 19, 2005, the Coast Guard published an interim rule with request for comments entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA" (70 FR 48637). That document also contains a detailed history of the Coast Guard's previous regulatory efforts.

Reason for Reopening the Comment Period

In response to the Notice of Proposed Rulemaking, the Coast Guard received more than 700 comments from the public and in response to the interim rule received 32 comments from the public. The Coast Guard also received a letter from the Mayor of the City of Chesapeake, which requested an additional comment period. This letter was prompted by several phone conversations between the Bridge Administration Staff for the Fifth Coast Guard District and City of Chesapeake officials regarding the possible changes to the bridge schedule. This letter accurately describes the substance of these phone conversations and has been added to the docket for this rulemaking.

This rulemaking will affect numerous vehicle commuters and also maritime traffic. Therefore, the Coast Guard is seeking comment from the public before proceeding. During this time we will also accept comments from any other interested party. The Coast Guard requests that you not re-submit comments already in the docket.

Request for Comments

We encourage you to participate in this rulemaking by submitting your comments to Commander (obr), Fifth

Coast Guard District as specified in **ADDRESSES.** We will consider comments received during this additional comment period and may change the rule in response to the comments.

Dated: January 5, 2006.

Larry L. Hereth,

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

[FR Doc. 06–333 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 1625–AA87

Security Zones; Port Valdez, Tank Vessel Moving Security Zone and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established permanent security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska, and TAPS tank vessels and the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the TAPS Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective February 13, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Duane Lemmon, Chief, Maritime Homeland Security Department, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7262.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard is taking this action for the protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those responsible for those acts. As a vibrant port with a high volume of oil tanker traffic, these security zones are necessary to provide protection for the TAPS Terminal and tankers transiting through the Port of Valdez and Valdez Narrows. Also these security zones are a necessary part of the Coast Guard's efforts to provide for the safety of the people and environment in Valdez and the surrounding area.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

Section 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

Section 165.T17–004—Security zone; Port Valdez, and

Section 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule created temporary § 165.T17–009, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska—Security zone".

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired. This extension was to allow for the completion of a notice-and-comment rulemaking to create permanent security zones to replace the temporary zones.

On October 23, 2002, we published the notice of proposed rulemaking (NPRM) that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address a collection of information issue regarding of the proposed rule (68 FR 14935, March 27, 2003).

Then on May 19, 2004, we published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM) (69 FR 28871) incorporating changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska security zone coordinates described in the NPRM (67 FR 65074). These changes included more accurate position information for the boundaries of the security zone. The comment period for that SNPRM ended on July 30, 2004. Although no comments were received that would result in changes to the SSNPRM, we have learned over the last 3 years while enforcing the temporary security zones (see those mentioned above and 68 FR 26490 (May 16, 2003) and 68 FR 62009 (October 31, 2003)) that the TAPS Terminal security zone is actually larger than it needs to be and that a smaller zone would allow the Coast Guard to monitor and enforce the zone more effectively. To make the security zone smaller, we proposed changes to the TAPS Terminal security zone coordinates in a Third Supplemental Notice of Proposed Rulemaking (TSNPRM) (70 FR 58646, October 7, 2005). In that TSNPRM, we also proposed removing unnecessary text from the description of the Valdez Narrows, Port Valdez, Valdez, Alaska security zone in proposed 33 CFR 165.1710(a)(3).

Discussion of Comments and Changes

We received no comments on the proposed rule published October 7, 2005, and no changes have been made from that proposed rule.

Regulatory Evaluation

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

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

Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tank Vessel Moving Security Zone is in effect for a short duration.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permission to enter the zone is available, and the Tank Vessel Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Duane Lemmon, Marine Safety Office Valdez, Alaska at (907) 835–7218.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply regulates vessels transiting in the Captain of the Port, Prince William Sound Zone for security proposes so that they may transit safely in the vicinity of the Port of Valdez and the TAPS Terminal. A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Vessels, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new § 165.1710 to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) *Location.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS tank vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°05′03.6″ N, 146°25′42″ W; thence northerly to yellow buoy at 61°06′00″ N, 146°25′42″ W; thence east to the yellow buoy at 61°06′00″ N, 146°21′30″ W; thence south to 61°05′06″ N, 146°21′30″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point.

(2) *Tank vessel moving security zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20 (b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′15″ N, 146°37′18″ W; thence south west to 61°04′00″ N, 146°39′52″ W; thence southerly to 61°02′32.5″ N, 146°41′25″ W; thence north west to 61°02′40.5″ N, 146°41′47″ W; thence north east to 61°04′07.5″ N, 146°40′15″ W; thence north east to 61°05′22″ N, 146°37′38″ W; thence south east back to the starting point at 61°05′15″ N, 146°37′18″ W.

(b) *Regulations.* (1) The general regulations in 33 CFR 165.33 apply to the security zones described in paragraph (a) of this section.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: December 16, 2005.

M.S. Gardiner,

Commander, United States Coast Guard, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 06–161 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 10

[USCG–2004–17455]

RIN 1625–AA85

Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending the maritime personnel licensing rules to include new security requirements when mariners apply for original, renewal, and raise of grade licenses and certificates of registry. This interim rule corrects omissions and ambiguities in the Coast Guard's preexisting maritime personnel licensing regulations. This interim rule will require all applicants for licenses and certificates of registry to have their identity checked and their fingerprints taken for a criminal record review by the Coast Guard. The new requirements are similar to those that apply to applicants for merchant mariner's documents.

DATES: This interim rule is effective January 13, 2006 and is applicable for applications received by the Coast Guard on or after that date. Comments and related material must reach the Docket Management Facility on or before April 13, 2006. Comments sent to the Office of Management and Budget on collection of information must reach OMB on or before March 14, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17455 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. All comments will be posted without change to *http://www.dms.dot.gov/feddocket,* including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation in Rulemaking Process" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to *http://www.dmt.dot.gov.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call Mr. Stewart Walker, Project Manager, National Maritime Center (NMC), U.S. Coast Guard, telephone 202–493–1022. If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

For questions on submitting an application for the issuance of a license or certificate of registry, call the nearest Coast Guard Regional Examination Center (REC), a list of which appears in Title 46, Code of Federal Regulations (46 CFR) section 10.105, or on the Internet at *http://www.uscg.mil/STCW/index.htm.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Comments that will provide the most assistance to the Coast Guard in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. Please see DOT's "Privacy Act" paragraph below.

The Coast Guard does not plan to hold a public meeting to solicit comments on this interim rule. However, you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why a hearing would be beneficial. If the Coast Guard determines that a public hearing would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–17455), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period in the drafting of the final rule.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received 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.). Because the Coast Guard currently maintains comments on its regulations on the Docket Management System for the Department of Transportation (DOT), please review DOT's Privacy Act Statement, published in the **Federal Register** on April 11, 2000 at 65 FR 19477, or visit *http://dms.dot.gov* for the handling of public comments under the Privacy Act.

II. Background and Purpose

A brief discussion of the terms used in portions of the preamble is offered to assist in the understanding of this interim rule. The term "credential" encompasses the merchant mariner's document (MMD), license, and certificate of registry (COR). This rule affects only licenses and CORs, so in this document we use the term "credential" only to refer to a license or COR, and we specify if and when we mean to include MMDs. We use the term "original" credential to refer to an applicant's first license or COR; the term "subsequent issue" credential to refer to a raise of grade, renewal, or duplicate license or COR; and the term "applicant" to refer to mariners or prospective mariners who are applying for a license or COR.

The Coast Guard has been regulating merchant mariners for quite some time, pursuant to an extensive statutory framework. 46 U.S.C. 2103. Title 46 U.S.C. Chapter 71 addresses licenses, certificates, and documents and authorizes the Coast Guard to issue licenses and CORs to applicants found qualified as to age, character, habits of life, experience, professional qualifications, and physical fitness. Mariners who serve as officers must possess licenses or CORs to serve on board U.S.-flagged merchant vessels. 46 U.S.C. 8103. The license or COR functions as proof of a mariner's qualifications and competency, specifying each class for which the holder is qualified. 46 U.S.C. 7101. Licenses and CORs for individuals on documented vessels may be issued only to citizens of the United States. 46 U.S.C. 7102. A license or COR is valid for five years, and may be renewed for additional five-year periods. 46 U.S.C. 7106. For raise of grade licenses, such as from second mate to chief mate, a mariner must have at least one year of service at sea, receive training, demonstrate practical skills, and pass an examination. Raises of grade are done at the option of the mariner, dependent on a mariner's personal initiative. Coast Guard regulations governing the licensing and registering of mariners appear at 46 CFR part 10.

At this time merchant mariners may be required to carry one of three credentials. These are the MMD, license, and COR. This interim rule affects only the mariner's license and COR.

MMDs are required for mariners who sail on vessels of at least 100 gross register tons on oceans and the Great Lakes, with some exceptions. When MMDs are required for a vessel, all mariners on that vessel, whether licensed or unlicensed, must hold them. When MMDs are not required for a vessel, mariners serving as officers on the vessel must still hold a proper license, while those not serving as officers generally will not need to possess any Coast Guard-issued credential.

Unlike licenses and CORs, the MMD is an identity document. An MMD shows the mariner's photograph, ID number, nationality, address, date of birth, physical characteristics, and signature. Also, for those mariners who do not need to carry a license, the MMD is used to show that the mariner has undergone a safety and security check, and to show any additional qualifications or endorsements in the Deck, Engine or Steward's Department, and any additional endorsements such as Lifeboatman or Tankerman Person-in-Charge.

The license is not an identity document. A license is a certificate that is issued for a term of five years and demonstrates a mariner's qualifications and competency to serve as a Deck

Officer, Engineer Officer, Pilot, or Radio Officer.

CORs are similar to licenses, but are used only for staff officers in purser and medical positions. Medical positions require that the candidate also hold a valid State license. The COR, like the license, is not used for identification purposes. It is a certificate that shows that the mariner is qualified to perform one or more specialized job functions.

The purpose of this interim rule is to amend 46 CFR part 10 to strengthen the security of the licensing process by increasing the likelihood that licenses and CORs are issued only to eligible mariners. To do this, the Coast Guard will now require mariners to appear at a Regional Exam Center (REC) to provide fingerprints, and allow REC staff to evaluate the information provided on the mariner's application at the REC. We will use the information provided to conduct a criminal record review in accordance with applicable law and regulations.

III. Discussion of the Rule

The Coast Guard is revising its merchant mariner credentialing regulations with respect to licenses and CORs. MMDs are not affected by this rule because on January 6, 2004, the Coast Guard published an interim rule in the **Federal Register**, entitled "Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs)" (69 FR 526) to require appearance at a Coast Guard REC for the purposes of presenting identification and having fingerprints taken for original, renewal, and raise of grade MMDs. This rulemaking is meant to implement similar requirements for licenses and CORs. Similar to the MMD rulemaking, the Coast Guard is phasing in these requirements over a five-year period to reduce the burden on both mariners and Coast Guard resources.

There are approximately 200,000 credentialed mariners in the United States. The MMD interim rule mentioned above affected approximately half of this population. This rulemaking will affect the remaining population. All of our substantive changes will increase the likelihood that the Coast Guard will process applications only from, and issue credentials only to, applicants who can prove they are who they claim to be, and whose backgrounds can be verified to make sure they meet security-related requirements. In addition to our substantive changes, we corrected minor stylistic and grammatical errors in 46 CFR part 10 only when making a substantive change within the same section.

The substantive changes to 46 CFR part 10 are discussed in Table 1, below. This table lists the problem with the preexisting regulations in column 1, then in column 2 it lists the change that was made and why.

The Department of Homeland Security (DHS), under the authority of the Aviation and Transportation Security Act and the Maritime Transportation Security Act of 2002, is developing a program that can be used to control access to secure areas in vessels, facilities, and ports. (See 49 U.S.C. 114(f)(12); 46 U.S.C. 70105.) This program includes a system-wide transportation worker identification card which is currently under development. DHS is developing this program through the Transportation Security Administration (TSA), the Coast Guard, and other Federal agencies, including others within DHS. The Coast Guard will work with TSA to ensure that the regulations for obtaining licenses and CORs are consistent with this initiative to minimize future impacts on mariners.

TABLE 1.—FORMER AND NEW PROVISIONS OF 46 CFR PART 10

Former Rule	New Rule
The definition for "conviction" specified that an applicant convicted of certain crimes was ineligible for licensing, but did not include foreign or military court convictions. (§ 10.103).	We revised the definition of "conviction" to include foreign or military court convictions, as these may be relevant to a determination of an applicant's character and habits of life; convictions for certain crimes by those courts now will count against an applicant. (§ 10.103).
An applicant who fails a chemical test for dangerous drugs was ineligible for licensing, but the regulation did not define a "dangerous drug." (§ 10.103).	The regulation now defines "dangerous drug," using the same definition that appears in 46 CFR 16.105. 46 CFR 16.105 is part of the Coast Guard's regulations on chemical testing of merchant mariners. This correction of an omission conforms our regulations in parts 10 and 16. (§ 10.103).
Applicants for renewals could conduct the entire renewal process by mail. (§ 10.105, § 10.209).	All applicants must appear at a Coast Guard Regional Exam Center (REC) to be fingerprinted by, and show identification (ID) to, an REC employee. This personal appearance requirement allows the Coast Guard to see that the fingerprints and ID actually belong to the applicant, thereby reducing the chance of fraud. (§ 10.105, § 10.209).
The Coast Guard allowed applicants to provide fingerprints taken by an outside entity. (§ 10.201).	All fingerprints must be taken at an REC, by an REC employee. Allowing mariners to submit fingerprints that were taken elsewhere left the Coast Guard with no assurance that the fingerprints actually belonged to the applicant. (§ 10.105, § 10.201).
Applicants for original and subsequent issue credentials had to show proof of their age and citizenship, but were not required to show ID. (§ 10.201).	Applicants must appear at an REC and present two acceptable forms of ID. The requirement of two IDs provides the Coast Guard with an adequate amount of documentation to be reasonably confident that applicants are who they say they are. (§ 10.105).

TABLE 1.—FORMER AND NEW PROVISIONS OF 46 CFR PART 10—Continued

Former Rule	New Rule
No list of acceptable forms of ID was presented in the regulation. (None).	A list of acceptable forms of ID is now presented in the regulation. As the requirement for ID is new, this list notifies the mariners as to what forms will be acceptable. The forms of ID that are listed are more easily verifiable by REC employees and more difficult to falsify. Additionally, on May 11, 2005, Congress enacted the REAL ID Act of 2005 (P.L. 109–13), which establishes a process for promulgating standards for the issuance of driver's licenses and ID cards. The statute states that after May 11, 2008 Federal agencies will be prohibited from accepting for any official purpose IDs issued by States and territories that do not comply with this Act. Because of this, acceptable driver's licenses and ID cards are limited to those issued by States and territories that meet the requirements of the Act. As the requirements of the Act do not become mandatory until May 11, 2008, IDs from all States will be acceptable at least until that date, so long as their validity can be verified by an REC employee. (§ 10.105).
An applicant's qualifications could only be approved by the Officer in Charge, Marine Inspection, (OCMI). (§ 10.201).	The application can now be approved by any officer specified by Coast Guard policy. This reduces the likelihood of unreasonable delays in approving an applicant's qualifications. (§ 10.201).
Applicants could prove citizenship through any Merchant Mariner's Document (MMD) issued by the Coast Guard. (§ 10.205).	The Coast Guard began issuing new MMDs utilizing more tamper-resistant cards on February 3, 2003. Only valid MMDs issued after that date may be used to document citizenship and identity. (§ 10.205).
Applicants could use any of the following atypical proofs of their citizenship: Baptismal certificates; parish records; statements of a physician's attendance at a birth; delayed certificates of birth; reports from the Census Bureau which showed the earliest available record of age or birth; affidavit(s) from a parent, other relative, or two or more responsible citizens; school records; immigration records; and insurance policies. (§ 10.205).	The Coast Guard is no longer accepting atypical proofs of citizenship. We believe verifying atypical proofs of citizenship is best left in the jurisdiction of government agencies that specialize in document verification and citizenship like the U.S. Citizenship and Immigration Services (USCIS) or the Department of State. Thus, we have aligned acceptable proof of citizenship with commonly used documents listed on the USCIS's Eligibility for Employment (I–9) form. By doing so, we maintained acceptance of commonly used documents, including birth certificates, Certificates of Citizenship, Certificates of Naturalization, and passports. These documents are issued by government agencies and are more difficult to alter than the previously accepted atypical proofs of citizenship. (§ 10.205).
There was no requirement for a criminal record review or fingerprint submission for renewals. (§ 10.201).	Criminal record reviews and fingerprints are required of all applicants each time an application is made, including renewals. No credential will be issued until the applicant has passed a criminal record review. This is to increase the likelihood that credentials are only given to those mariners whose character and habits of life are such that the applicant can be entrusted with the duties and responsibilities of the license or COR. (§ 10.201).
Criminal record reviews were not mandatory in the language of the regulation for all original and subsequent issue applicants. (§ 10.201).	Criminal record reviews are now required for all applicants—regardless of whether they are original or subsequent issue applications. The Coast Guard will not issue any credential until the applicant has passed a criminal record review. This is to increase the likelihood that credentials are only given to those mariners whose character and habits of life are such that the applicant can be entrusted with the duties and responsibilities of the license or COR. (§ 10.201).
In section 10.201(a), the Officer in Charge, Marine Inspection (OCMI) had to be satisfied as to an applicant's eligibility for a license or COR. (§ 10.201).	We revised 10.201(a) to allow others in the Coast Guard to make eligibility determinations. This change was made to streamline internal Coast Guard administrative procedures. (§ 10.201).
Applicants were not required to provide new fingerprints and/or ID when seeking a raise of grade or renewal credential. (§ 10.209).	Every time that a mariner applies for a new credential they must provide a set of fingerprints and two acceptable forms of ID. While the likelihood that an individual's fingerprints will change is low, it is imperative that the Coast Guard determine if a mariner is who he or she says he or she is before issuing a credential. This information will be used for identification purposes as well as to update any criminal record history. (§ 10.105, § 10.209).

IV. Regulatory Requirements

A. Administrative Procedure Act

Implementation of this rule as an interim rule with a request for public comment after the effective date of the rule is based upon the "good cause" exception found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B). The Coast Guard has determined that delaying implementation of this rule to await public notice and comment is unnecessary, impracticable and contrary to the public interest for the following reasons:

In the interests of marine safety and seamen's welfare, the Coast Guard was given general superintendence of merchant marine personnel by 46 U.S.C. 2103 and 46 U.S.C. chapter 71. In 2002, Congress found that U.S. ports are susceptible to large-scale acts of terrorism that could cause a large loss of life or economic disruption, that "ports are often a major locus of Federal crime," (Maritime Transportation Security Act of 2002, section 101, Pub. L. 107–295, 116 Stat. 2064) and that it

is in the best interest of the United States to increase port security. A Coast Guard-issued license authorizes its holder to serve in the capacity of vessel's officer, allowing him or her to assume positions of responsibility in the command and control of merchant marine vessels. The harm that can be caused by persons who wrongfully obtain licenses with the intention of committing crimes or terrorist acts jeopardizes mariner safety and welfare, as well as national security. Our goal is to protect the licensing process from abuse. As discussed above, the Coast Guard has identified several omissions and ambiguities in the former rule that could facilitate licensing abuse. This interim rule corrects those omissions and clarifies those ambiguities to promote maritime safety and security within the United States.

Further, delay or suspension of the existing merchant mariner licensing process pending completion of notice and comment and publication of a final rule could have a severe impact on the professional lives of individual mariners, who are required to carry valid licenses to work on board certain U.S.-flag vessels, and could interfere with maritime commerce, which relies on the ready availability of licensed personnel.

The delay of this rule would set up "a situation in which the interest of the public would be defeated," as well as impede the "due and timely execution" of an important Coast Guard function; see *Utility Solid Waste Activities Group v. Environmental Protection Agency*, 236 F.3d 749 (D.C. Cir. 2001). The Coast Guard therefore finds delay of the implementation of this rule to allow for prior notice and comment to be impracticable and contrary to the public interest.

The Coast Guard also finds good cause, under 5 U.S.C. 553(d)(3), for this interim rule to take effect immediately. The Coast Guard finds that, for the reasons previously discussed, it would be impracticable and contrary to the public interest to subject this interim rule to prior notice and public comment, or to delay its taking effect.

Although we have good cause to publish this rule without prior notice and comment, we value public comments. As a result, we are soliciting public comments on this interim rule and may revise the final rule in response to those comments.

B. Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review", 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule has been identified as significant under Executive Order 12866 and has been reviewed by OMB.

This interim rule changes certain requirements in 46 CFR part 10 for how mariners and prospective mariners will apply for licenses and CORs.

This interim rule requires applicants for original (new) and subsequent issue (raise of grade, renewal, and duplicate) licenses and CORs to have their fingerprints taken at an REC and to have their IDs checked at an REC. The rule requires an applicant to appear at least once in the application process, even if submitting an application by mail, fax, or other electronic means, and requires that the Coast Guard conduct fingerprinting and check IDs for original (new) and subsequent issue (raise of grade, renewal, and duplicate) license and COR transactions. The primary costs of this rule to applicants for licenses and CORs include the travel cost to an REC and the time spent at an REC in order to have their fingerprints taken and IDs checked. Currently, there is no consistent fingerprinting or identification policy among the RECs for license or COR applications. Some RECs asked all license applicants to visit an REC for fingerprinting, and some do not. All RECs allowed an applicant to renew a license or COR entirely by mail, since there was no requirement to submit fingerprints for that transaction. This interim rule will create one consistent policy at all RECs.

The following sections discuss the baseline population of applicants and the portion of this population that will incur additional costs, the estimated cost per applicant, and the estimated national costs and benefits.

Baseline Population

The average annual population of applicants who apply for a license or a COR is 30,142 mariners and prospective mariners. This population includes 9,384 applicants for original (new) licenses, 20,627 applicants for subsequent issue (raise of grade, renewal, and duplicate) licenses, and 131 applicants for CORs. This population includes all applicants with or without a valid MMD at the time of the license or COR application. Table 2 presents the average annual applicant population by transaction type.

TABLE 2.—SUMMARY OF AVERAGE ANNUAL APPLICANT POPULATION BY TRANSACTION TYPE

Current credential status of applicant	Applicants for original licenses	Applicants for subsequent issue licenses	Applicants for all CORs	Total
Applicants who currently have an MMD	2,038	7,302	131	
Applicants who DO NOT currently have an MMD	7,346	13,325		
Total Affected Population	9,384	20,627	131	30,142

The average annual population is based on field information and data received from the Coast Guard's NMC and the Coast Guard's Maritime Personnel Qualifications Division. The period of analysis is inclusive from year 2005 through year 2009. We use a five-year period because all currently licensed mariners must renew their licenses and CORs once every five years. Therefore, this five-year period will cover a complete license and COR renewal cycle, which will give an accurate snapshot of the total cost of the interim rule for mariners to comply with the new application requirements.

The subset of the population that will incur additional costs from this rule is comprised of those applicants who currently apply for licenses and CORs who do not have their fingerprints taken at an REC and do not have their IDs checked at an REC. These applicants must now incur an additional cost for travel to an REC to have their fingerprints taken and to have their IDs checked.

Not all applicants will incur additional costs from this interim rule. The subset of the population that will not incur additional costs includes applicants who currently visit an REC to have their fingerprints taken and their

IDs checked. These applicants are currently complying with what this rule requires by visiting an REC to have their fingerprints taken and their IDs checked. Prior to this interim rule, some RECs asked applicants to visit an REC to have fingerprints taken and IDs checked as a part of the application process for licenses; other RECs did not. Some applicants also traveled to RECs to have their fingerprints taken because of their close proximity to an REC.

Based on information from the Coast Guard's RECs, we estimate that 40 percent of the applicants for original licenses and 15 percent of the applicants for subsequent issue licenses currently travel to an REC for the purposes of having their fingerprints taken and IDs checked. Therefore, we do not include these applicants in the cost analysis.

There could be other applicants who do not incur additional costs, such as applicants who simultaneously apply for both MMDs and licenses. These applicants may have chosen to apply for both credentials at the same time to minimize cost and to synchronize the expiration dates for both of their credentials. Since these applicants will be applying for an MMD and a license at the same time, they will make one appearance at an REC to have their fingerprints taken and to have their IDs checked. These applicants would be regulated and processed under the regulations for MMDs published on January 6, 2004, which currently require applicants to have their fingerprints taken and their IDs checked at an REC. 69 FR 526. Therefore, these applicants do not incur additional costs by this rule.

However, it is difficult to estimate what percentage of these applicants is simultaneously applying for credentials after the publication of the regulations for MMDs. We do not adjust our analysis for these mariners, and therefore our estimates may be conservative because we possibly have counted some of the applicants twice, once under the MMD interim rule, and once under this interim rule. Based on discussions with Coast Guard staff and REC officials, we believe that this number will be relatively small.

Accordingly, the estimated total annual quantity of applicants who will incur an additional cost (referred to as the baseline population) by this rule is 23,294 applicants for licenses and CORs. This baseline population is estimated as the total affected population less the subset of the affected population that does not incur additional costs. Table 3 presents the summary of the annual baseline population that will incur additional costs under this interim rule.

TABLE 3.—SUMMARY OF AVERAGE ANNUAL BASELINE POPULATION BY TRANSACTION TYPE THAT WILL INCUR ADDITIONAL COSTS [1]

Current credential status of applicant	Applicants for original licenses	Applicants for subsequent issue licenses	Applicants for all CORs	Total
Applicants who currently have an MMD	1,223	6,207	131	.....
Applicants who DO NOT currently have an MMD	4,408	11,326	.....	.....
Total Affected Population [2]	5,630	17,533	131	23,294

[1] This baseline population is adjusted to reflect the percentage of current applicants who already travel to have their fingerprints taken at an REC. These are the totals in Table 2 less a 40 percent reduction in original applicants and less a 15 percent reduction in subsequent issue applicants.

[2] Some values may not total due to rounding.

Costs

The costs of this rule include (1) the cost of applicants' time at an REC, and (2) the cost of applicants' travel to and from an REC. For all costs, we assume an applicant's wage rate as a proxy for the opportunity cost of the work time or free time forgone due to a mariner's visit to an REC and travel to and from an REC. We also assume maximum government per diem reimbursement rates as proxy unit costs for travel expenses. Table 4 presents the basic unit cost assumptions and sources that we used in this analysis of the interim rule.

TABLE 4.—SUMMARY OF BASIC UNIT COSTS

Item	Unit cost	Source reference
Opportunity Cost of Applicant Time	$37/hour	This wage rate is conservatively based on the 90th percentile wage estimate (the highest) from the 2002 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels published by the Bureau of Labor Statistics. This wage rate best applies to licensed officers because they typically earn higher wages than other mariners.
Driving Mileage	$0.375/mile (rounded to $0.38/mile).	2004 Privately Owned Vehicle (POV) Reimbursement Rates for Automobiles in Amendment 2003–6 of the *Federal Travel Regulation*, published December 15, 2003, and effective January 1, 2004, by the General Services Administration (GSA). 68 FR 69618.
Round-trip Air-Fare	$250/trip	This airfare is based on industry research of current airfare price levels and the 2002 price index for airline fares in the *Statistical Abstract of the United States: 2003,* 123rd Edition, issued December 2003, by the U.S. Census Bureau.

TABLE 4.—SUMMARY OF BASIC UNIT COSTS—Continued

Item	Unit cost	Source reference
Round-trip Airport Transfer	$50/transfer	This round-trip airport transfer cost is based on research of the average private and public transfer costs, including taxi or car rental costs associated with U.S. airports and regional destinations. It is not a mathematic or rigorous estimate, but an average transfer cost based on information available from associations and trade groups, airports, transit authorities, and governments.
Incidentals and Meals	$53/day	The average incidentals and meals reimbursement rate for the 17 current REC locations. The GSA provides rates for the continental U.S. The Department of Defense provides rates for the non-continental U.S. These rates are part of the *Federal Travel Regulation* and are frequently updated.
Lodging	$137/night	The average lodging reimbursement rate, including an additional 18% lodging tax, for the 17 current REC locations. The GSA provides rates for the continental U.S. The Department of Defense provides rates for the non-continental U.S. These rates are part of the *Federal Travel Regulation* and frequently updated.

Cost of REC Time

We estimate that an applicant will spend two hours at an REC being fingerprinted, having their ID checked, and possibly waiting before, during, or after to complete these requirements. This is the REC wait-time estimate based on discussions with Coast Guard REC personnel familiar with operations and customer processing time for applicants who currently visit an REC for fingerprinting and ID examination. We expect very few applicants to take more than two hours, and many to take less time; however, we believe two hours to be an appropriate estimate of the total possible time an applicant will spend at an REC in order to calculate conservative but reasonable costs attributable to REC processing and waiting time.

We estimate the cost of an applicant's time at the REC to be $74 (2 hours × $37 per hour cost of time = $74). The estimated annual cost of REC time for the baseline applicant population is $1,723,756 ($74 per applicant × 23,294 total applicants = $1,723,756).

Travel Cost

We estimate round-trip travel, travel to and from an REC, to take one day or require multiple day and overnight stays to complete. After a review of current mariner addresses from the Coast Guard's NMC, we estimate that approximately 60 percent of current mariners live within one-day round-trip travel to an REC, 30 percent live within overnight round-trip travel (one night and two days) to an REC, and 10 percent live at a distance greater than overnight round-trip travel (greater than one night and two days) to an REC. These are national percentages for all mariners who currently have addresses on file with the NMC.

We assume these national percentages will most likely approximate the travel distances to an REC for current license and COR applicants. Therefore, we are applying the demographic characteristics (home of record trends) of the current population of all mariners, upon the future pool of applicants for licenses and CORs. Table 5 presents a summary of the baseline applicant population that will incur additional cost by travel distance to their closest REC using these national population percentages.

TABLE 5.—SUMMARY OF THE AFFECTED APPLICANTS BY REC TRAVEL DISTANCE

Distance to closest REC (miles)	Round-trip distance to closest REC (miles)	Percent of current mariner population within distance (percent)	Number of possible license or COR applicants within distance [1]
50	100	60	13,976
100	200	30	6,988
≥200	≥400	10	2,329
Total		100	23,294

[1] Some values may not total due to rounding.

We estimate that most mariners live within a close proximity to an REC—approximately 90 percent live within same-day or one-night round-trip travel from an REC. However, there are mariners who live far from their closest REC, which we consider to be greater than overnight round-trip travel or more than 400 miles round trip. For example, this would include mariners in parts of the Great Lakes Basin and Alaska, where a large area is served by only one or a few RECs.

We assume for the purpose of estimating costs that most applicants who live within short distances to an REC will drive round trip—this will ensure similar application of cost methodology across variable distances. While there will be some applicants who take public transportation or use another mode of travel, we believe, on average, most applicants will drive themselves to an REC, with the exception of those applicants who live far from their nearest REC, which we consider to be greater than overnight round-trip travel.

We assume that most applicants who live far from an REC will fly round

trip—this will ensure similar application of cost methodology for those who will travel far distances. While there will be some applicants who take another mode of travel or a combination of travel modes, we believe, on average, most applicants will choose to travel by plane if they live far away.

We assume the applicants will drive or fly during the day to complete their round-trip travel to and from an REC. We also assume that one-day of travel is approximately eight hours of travel. Table 6 presents a summary of travel distances and time:

TABLE 6.—SUMMARY OF THE TRAVEL DISTANCES AND TIME [1]

Round-trip travel distance from closest REC (miles)	Duration of travel	Maximum number of travel days to complete distance	Maximum number of hours to complete
100	One-day Driving	1	8
200	Overnight Driving	2	16
≥400	Overnight Air	2	16

[1] The travel time is assumed to be the maximum number of days that would be necessary to complete the round-trip travel converted into hours.

While some applicants will drive longer distances in a single day, we assume the maximum number of days and hours to complete each round-trip driving distance will provide an appropriate estimate of time to calculate the maximum costs attributable to applicant travel time.

The following is an estimate of applicant travel costs using the above populations, unit costs, distances, and times:

One-day Travel by Automobile

For an applicant within one-day round-trip travel to and from an REC, we assume the cost to include the mileage, the opportunity cost of the time spent traveling, and incidentals. We assume the cost for one-day round-trip incidentals to be $53 and the mileage reimbursement to be $0.38 per mile.

The estimated cost per applicant for one-day round-trip travel is $387 (($100 round-trip miles × $0.38 per mile reimbursement rate) + (8 travel hours × $37 per hour cost of time) + $53 per day incidentals = $387). The estimated annual cost for one-day round-trip travel for the affected applicants is $5,408,712 ($387 per applicant × 13,976 one-day travel applicants = $5,408,712).

Overnight Travel by Automobile

For an applicant having to travel overnight, we assume the cost to include mileage, the opportunity cost of time spent traveling, lodging, and incidentals. We also assume the cost for lodging and incidentals for overnight round-trip travel to be $243 ((2 days × $53 per day incidentals) + $137 per night lodging = $243).

The estimated cost per applicant for overnight round-trip travel is $911 ((200 round-trip miles × $0.38 per mile reimbursement rate) + (16 travel hours × $37 per hour cost of time) + $243 lodging and incidentals = $911). The estimated annual cost of overnight round-trip travel for the affected applicants is $6,366,068 ($911 per applicant × 6,988 applicants = $6,366,068).

Greater Than Overnight Travel (Travel by Air)

We assume that applicants who live at distances greater than 200 miles must travel for more than one night and will incur the maximum cost of this interim rule. There exists no precise data to predict or forecast with confidence the actual or future quantity of these applicants living at far distances from an REC, and the combinations of days and nights they will need to travel round-trip to an REC. We expect these relatively few applicants will most likely choose another mode or combination of modes of transportation to travel round-trip between their home of record and the closest REC. We assume the cost of this travel will consist of the airfare, airport transfers to-and-from home and an REC, the opportunity cost of time spent traveling, and the round-trip travel costs associated with overnight incidentals and lodging.

We estimated the cost per applicant for lodging and incidentals for overnight air travel to be $243 ((2 days × $53 per day incidentals) + $137 per night lodging = $243). The estimated cost per applicant for overnight air travel is $1,185 ($250 airfare + (2 round-trip airport transfers × $50 per transfer) + (16 travel hours × $37 per hour cost of time) + $243 lodging and incidentals = $1,185). The estimated annual cost of overnight air travel for affected applicants is $2,759,865 ($1,185 per applicant × 2,329 applicants = $2,759,865).

We assume these estimates will approximate the maximum costs associated with travel by air. Most likely the total travel time will be less and involve fewer lodging and incidentals expenses, and will not be as costly in terms of the applicant's time.

Total National Cost

The annual cost of this rule to the affected applicants, consisting of the cost of travel and time for these applicants, is estimated to be $16 million (non-discounted). The estimated five-year (2005–2009), discounted present value of the total cost of this rule to the applicants is $71 million based on a 7% discount rate and $77 million based on a 3% discount rate. As stated above, all currently licensed mariners must renew their licenses and CORs every five years. Therefore, a five-year period of analysis covers a complete renewal cycle and provides an accurate snapshot of the total cost of the interim rule for affected applicants. Table 7 summarizes the total annual cost of the rule to applicants.

TABLE 7.—SUMMARY OF AFFECTED APPLICANTS AND ANNUAL COST [1]

Cost component	Number of affected applicants	Annual costs per affected applicant	Annual cost for all affected applicants [2]	Percent of total annual cost (percent)
REC Time Cost	23,294	$74	$1,723,756	11
One-day Round-trip Travel Cost	13,976	387	5,408,712	33
Overnight Round-trip Travel Cost	6,988	911	6,366,068	39
Greater Than Overnight Round-Trip Travel Cost	2,329	1,185	2,759,865	17
Total Annual Cost of the Interim Rule			16,258,401	100

[1] All annual costs include the cost of the applicants' time spent traveling and time spent at an REC.
[2] Some values may not total due to rounding.

The primary cost to these applicants of this interim rule is the travel cost (90 percent of the total cost), which is driven by the mariners' opportunity cost of time, cost of lodging, and other per diem factors. About one-half of the cost of this rule to the affected applicants, as a percentage of total annual cost, is overnight and greater than overnight round-trip travel, which are 39 percent and 17 percent, respectively. However, these two travel cost components only apply to 40 percent of the applicants, with greater than overnight round-trip travel only applying to 10 percent.

These costs will impact mariners and prospective mariners who are interested in applying for licenses or CORs. The cost impacts will be high for any mariner who will have to travel to an REC, because of the limited number of RECs available: 17 RECs nationwide, including two in Alaska and one in Hawaii.

In Table 7, the cost per applicant for time spent at an REC is relatively low at $74 per applicant. However, if there is any travel involved that will force an applicant to forgo a minimal amount of work, such as one-day round-trip travel, then the total cost per applicant increases 6 times to $461, which includes the additional one-day round-trip travel cost of $387 per mariner ($74 REC time + $387 one-day round-trip travel = $461 for a mariner who must travel one-day and visit an REC).

However, we believe the total cost estimate of this interim rule to the affected applicants is a conservative estimate, because the REC locations, together, can serve approximately 90 percent of applicants within a 100-mile radius. We also used conservative driving distances, for example, one-day travel is 100 miles round-trip and overnight travel is 200 miles round-trip. The RECs are also located in or near major maritime ports that may allow mariners and prospective mariners to access the REC before, during, or after the applicants' marine-related business operations.

The cost of the applicants' time, however, will be a net loss to the applicants. The applicants will forgo work-time or free-time in order to comply with this rule, and may have to compensate by using vacation leave. However, we do not expect there to be a loss in business or productivity in the maritime sector, because the work schedules of these mariners often involve several days off their vessels per voyage, which they could use to visit an REC. Owners and operators of vessels also have several mariners they can use in the event another mariner is not available.

Benefits

We anticipate several qualitative benefits from the new fingerprinting and ID requirements established by this interim rule. All applicants for licenses and CORs will now have their fingerprints taken by Coast Guard personnel at an REC and must have their ID checked by Coast Guard personnel at an REC. In the past, applicants could have had their fingerprints taken and their identity checked by outside entities and submitted them by mail without a guarantee of accuracy or validity.

The Coast Guard currently requires applicants seeking licenses or CORs to have their basic information on identity and possible criminal records reviewed so that the Coast Guard issues licenses and CORs only to eligible applicants. However, in the past some mariners did not have their fingerprints taken at, nor their identification checked by, the Coast Guard. Under these conditions, there was a possibility that fingerprints and proof of ID could have been falsified. A terrorist could then use a falsified license or COR to portray himself or herself as a qualified deck, engineering, or staff officer. The cumulative effect of the changes described in Table 1 (see Discussion of Rule) will be to increase the likelihood that the Coast Guard will process applications only from, and issue credentials only to, applicants who can prove they are who they claim to be, and whose backgrounds can be verified to make sure they meet security-related requirements.

We expect this interim rule to assist the Coast Guard in its effort to help secure U.S. ports, waterways, marine infrastructure, and marine-related commercial activities and international trade by protecting the licensing process from abuse.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impacts on small entities.

We do not expect this rule to have a significant impact on a large number of small entities. This rule sets new application requirements for mariner licenses and CORs that will prevent abuse and assist the Coast Guard in its effort to help secure U.S. marine infrastructure, commercial activities, and the free flow of trade. We expect this interim rule to help prevent the interruption of U.S. business activities that may result from the abuse of mariner licenses and CORs.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can

better evaluate its effects on them and participate in the rulemaking. If you think this interim 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 under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this interim rule or any policy or action of the Coast Guard.

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).

C. Paperwork Reduction Act

This interim rule calls for a collection of information under the Paperwork Reduction Act of 1995, Title 44, United States Code (44 U.S.C.) sections 3501–3520. This rule modifies the burden in the collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0040. The fingerprint and identification (ID) requirements involved with the license and certificate of registry (COR) applications are included in the previously approved collection.

This interim rule changes certain requirements in Title 46, Code of Federal Regulations (46 CFR) part 10 for how mariners and prospective mariners will apply for licenses and CORs.

This interim rule requires applicants for original (new) and subsequent issue (raise of grade, renewal, and duplicate) licenses and CORs to have their fingerprints taken and to have their IDs checked at a Coast Guard Regional Examination Center (REC). The rule requires an applicant to appear at least once in the application process, even if submitting an application by mail, fax, or other electronic means, and requires that the Coast Guard conduct fingerprinting and check IDs for original and subsequent issue license and COR transactions as provided in 46 CFR 10.105 and 10.209. The rule also changes the list of acceptable forms of ID that an applicant must present at an REC as provided in 46 CFR 10.105 and 10.205, and requires that applicants report foreign and military convictions in addition to domestic convictions as provided in 46 CFR 10.201.

The primary impacts of this rule for license and COR applicants include the travel to and from an REC and the time spent at an REC in order to have their fingerprints taken and IDs checked. There has not been a consistent fingerprinting or ID policy among the RECs for license or COR applications. Some RECs ask all license applicants to visit the REC for fingerprinting and some do not. Some RECs permit an applicant to renew a license or COR entirely by mail, since there was no requirement to submit fingerprints for that transaction. If an REC did require fingerprints, candidates were allowed to have them taken by local authorities (sheriff, police, etc.) and submit them with their applications. The continuance of this practice could allow an applicant to submit fingerprints that are not those of the license candidate. This interim rule creates a consistent policy for all RECs, and the Coast Guard will be assured that the prints submitted for a criminal record check are those of the applicant who appears before the Coast Guard with appropriate ID.

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and similar actions. The title and description of the collection of information, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the additional time mariners will spend traveling to and from an REC, the additional time mariners will spend waiting and processing at an REC, the changes in the list of acceptable forms of ID that a mariner must present at an REC, and the requirement that applicants must now report foreign and military convictions in addition to domestic convictions.

We assume there are no additional burden hours or costs associated with the changes to the list of acceptable forms of ID, because these forms of legitimate IDs are widely held by the public. We also determined that the requirement for applicants to report foreign and military convictions in addition to domestic convictions is a negligible impact because they currently must report convictions, not specified as foreign or military, in the application process.

Title: Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing, and Entry Level Physical Report.

OMB Control Number: 1625–0040.

Agency Form Numbers: CG–719A, CG–719B, CG–719K, CG–719S, CG–719P, and CG–719K/E.

Summary of the Collection of Information: In accordance with 46 U.S.C. and 46 CFR, the collection of this information is necessary to determine competency, character, and physical qualifications for the issuance of Coast Guard licenses, CORs, and merchant mariner documents.

Summary of the Modification to the Collection of Information: This interim rule adds new collection of information requirements in 46 CFR 10.105, 10.201, 10.205, and 10.209 for license and COR applicants. These new provisions require applicants to spend time traveling to and from an REC, to spend time waiting and processing at an REC, to present ID at an REC from a list of acceptable forms of ID, and to report foreign and military convictions.

Need for Information: The Coast Guard needs this information to process applications only from, and issue credentials only to, applicants who can prove they are who they claim to be, and whose backgrounds can be verified to make sure they meet security and safety related requirements. This information assists the Coast Guard in its effort to help secure U.S. ports, waterways, marine infrastructure, and marine-related commercial activities, including international trade, by protecting the licensing and COR process from abuse.

Description of Respondents: The previously approved collection and the interim rule require applicants for licenses and CORs to submit their applications, including their fingerprints, to an REC. However, the interim rule further requires applicants for original and subsequent issue licenses and CORs to have their fingerprints taken and their IDs checked at an REC. It also requires applicants to present IDs at an REC from a list of acceptable forms of ID and to report foreign and military convictions on the application.

Number of Respondents: The previously approved number of respondents is 200,000. This rule will not increase the number of respondents in this collection. This rule requires the existing population of applicants (respondents) for original and subsequent issue licenses and CORs to have their fingerprints taken and their IDs checked at an REC. Previously, the Coast Guard also permitted respondents in this collection to apply for some originals and all subsequent issue licenses and CORs entirely by mail as an alternative to traveling to an REC.

Frequency of Response: The previously approved number of responses is 50,000 each year. This rule will increase that number by 23,294, which is the annual number of applicants that were previously not required to and chose not to appear at an REC to have their fingerprints taken and their IDs checked at an REC. See the "Regulatory Evaluation" section for a discussion of the baseline population of applicants. The total number of annual responses will now be 73,294.

Burden of Response Time From Revision of Collection: The burden of response time from this rule on applicants for licenses and CORs includes the travel time to and from an REC and the time spent at an REC in order to have their fingerprints taken and IDs checked. We assume the applicants will drive or fly during the day to complete their round-trip travel to and from an REC. We also assume that one day of travel is approximately eight hours of travel (see Table 5 and Table 6 of the "Regulatory Evaluation" section for a summary of travel distances and time).

We estimate that an applicant will spend two hours at an REC being fingerprinted, having their ID checked, and possibly waiting before, during, or after to complete these requirements. This is the REC wait-time estimate based on discussions with Coast Guard REC personnel familiar with operations and customer processing time for applicants who currently visit an REC for fingerprinting and ID examination (see the *Cost of REC Time* discussion in the section "Regulatory Evaluation").

Estimate of Total Annual Burden Hours: The previously approved total annual burden is 21,875 hours. This rule, because of the travel requirements and REC waiting and processing time, will increase that number by approximately 307,481 hours (see the "Regulatory Evaluation" section for a discussion of the time and costs of this rule for applicants). The total number of hours will now be 329,356.

Estimate of Total Annual Burden Cost: There is not a total annual operations & maintenance (O&M) burden cost reported in the previously approved collection (see form OMB 83–I, Box 14.b., for this collection). Since this rule requires applicants to travel to and from an REC and to wait at an REC while processing fingerprints and IDs, there is an associated reporting cost burden (annual O&M costs) that is added to the collection. This cost burden includes expenses from this rule incurred by applicants for travel time, lodging, incidentals, and time waiting at an REC. This rule increases the annual cost burden by approximately $16 million, which is the same as the reported non-discounted annual cost of the rule (see the "Regulatory Evaluation" section for a discussion of the costs of this rule for applicants). The total annual O&M cost to be reported on form OMB 83–I, Box 14.b., of this collection will be $16 million.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this interim rule to OMB for its review of the collection of information. Due to the circumstances surrounding this interim rule, we asked for emergency approval of our request. We received OMB approval for this collection of information on January 4, 2006.

We request public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the collection burden.

If you submit comments on the collection of information, submit them to both OMB and the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for this collection of information on January 4, 2006. The approval expires June 30, 2006.

D. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Coast Guard certifies that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The law is well-settled that States may not regulate in categories expressly reserved for regulation by the Coast Guard. The law also is well-settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000). Since this interim rule involves the manning of U.S. vessels and the licensing of merchant mariners, it relates to personnel qualifications. Because the States may not regulate within this category, this rule does not present new preemption issues under Executive Order 13132.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. The Act does not require an assessment in the case of an interim rule issued without prior notice and public comment. Nevertheless, the Coast Guard does not expect this rule to result in such an expenditure. We discuss this rule's effects elsewhere in this preamble.

F. Taking of Private Property

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

G. Civil Justice Reform

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

H. Protection of Children

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

I. Indian Tribal Governments

This interim 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.

J. Energy Effects

We have analyzed this interim 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. Although it is a "significant regulatory action" under Executive Order 12866, it affects only the issuance of credentials to merchant mariners and therefore 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.

K. Technical Standards

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

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

L. Environment

We have analyzed this interim rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe this rule should be categorically excluded under Figure 2–1, paragraph (34)(c) of the Instruction, from further environmental documentation. This rule updates the training, qualifying, licensing, and disciplining of maritime personnel. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 10 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 10.103, revise the definition for "Conviction" and add, in alphabetical order, a definition for "Dangerous drug" to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). Conviction of more than one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expunged conviction will not negate the conviction unless it is proved to the Coast Guard that the expungement is based upon a showing that the court's earlier conviction was in error.

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

* * * * *

■ 3. Revise § 10.105 to read as follows:

§ 10.105 Applications.

(a) Applicants for licenses and certificates of registry may apply at the following Coast Guard Regional Examination Centers (RECs):

Boston, MA
New York, NY
Baltimore, MD
Charleston, SC
Miami, FL
New Orleans, LA
Houston, TX
Memphis, TN
St. Louis, MO
Toledo, OH
San Pedro, CA
Oakland, CA
Portland, OR
Seattle, WA
Anchorage, AK
Juneau, AK
Honolulu, HI

(b) A complete application for a license or certificate of registry, whether original, renewal, duplicate, or raise of grade, consists of a written application, all applicable supplementary documents required by this part, fingerprints, and two forms of ID. The written portion of the application may be submitted by mail, fax, or other electronic means. However, no application is complete until the applicant appears in person and is fingerprinted by and provides evidence of his or her identity to a member of the REC staff. If the applicant is simultaneously applying for more than one credential, a single personal appearance and fingerprinting will satisfy this requirement for all pending applications.

(c) Each applicant must present at least two forms of identification to an REC employee as evidence of his or her identity. Expired or otherwise invalid forms may not be used. At least one of the forms of identification must contain the applicant's photograph. Acceptable forms of identification include the following:

(1) U.S. military identification card;

(2)(i) Before May 11, 2008, a U.S. driver's license;

(ii) On or after May 11, 2008, U.S. driver's license issued by a State that meets the standards promulgated pursuant to the REAL ID Act of 2005;

(3) U.S. passport;

(4) Official identification card issued by a State, or local government or by a territory or possession of the U.S. that meets the standards promulgated pursuant to the REAL ID Act of 2005.

(5) Official identification card issued by the Federal Government. This

includes a Federal employee's identification credential;

(6) Port credential, with photograph of the applicant, issued by State or local government port authority;

(7) Law enforcement credential, that includes a photograph of the applicant and is issued by a Federal, State, or local government or by a territory or possession of the U.S.;

(8) Merchant mariner's document issued after February 3, 2003;

(9) Foreign passport; or

(10) Original or a certified copy of a birth certificate, issued by a State, county, municipality or outlying possession of the U.S. bearing an official seal.

■ 4. In § 10.201, revise paragraphs (a), (b), (h) introductory text, and (h)(1) to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) The applicant for a license or certificate of registry, whether original, renewal, duplicate, or raise of grade, must establish to the satisfaction of the Coast Guard that he or she possesses all the qualifications necessary (including but not limited to age, experience, character references and recommendations, physical health, citizenship, approved training, passage of a professional examination, a test for dangerous drugs, and when required by this part, a practical demonstration of skills) before the Coast Guard will issue a license or certificate of registry.

(b) No person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for a license or certificate of registry, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

* * * * *

(h) *Criminal record review.* The Coast Guard will review the criminal record of an applicant before the issuance of a license or certificate of registry. An applicant conducting simultaneous transactions for merchant mariner's credentials will undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

(1) The Coast Guard will use the fingerprints submitted pursuant to § 10.105(b) to obtain a criminal record report. An applicant's criminal record report may be used to determine that an applicant's character and habits of life are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry. Should such a determination be made, the application may be disapproved. If an application is disapproved, the Coast Guard will advise the applicant in writing that the reconsideration and appeal procedures in subpart 1.03 of this chapter apply and will, in appropriate circumstances, notify the applicant of the reason(s) for disapproval. The Coast Guard will not administer a written examination until final agency action has been made on the applicant's appeal.

* * * * *

■ 5. In § 10.202 add paragraph (m) to read as follows:

§ 10.202 Issuance of licenses, certificates of registry, and STCW certificates or endorsements.

* * * * *

(m) No license or certificate of registry will be issued until the applicant has passed a criminal record review as set forth in § 10.201 of this chapter.

■ 6. In § 10.205 revise paragraphs (a) and (c) to read as follows:

§ 10.205 Requirements for original licenses, certificates of registry, and STCW certificates and endorsements.

(a) *General.* The applicant for an original license or certificate of registry must present satisfactory documentary evidence of eligibility with respect to the applicable requirements of § 10.201 through § 10.203. Each applicant must submit an application as set forth in § 10.105 and, unless exempted under § 10.112, submit the evaluation fee set out in table 10.109 in § 10.109.

* * * * *

(c) *Citizenship.* Each applicant must provide acceptable evidence of his or her citizenship to the Coast Guard. The Coast Guard will reject any evidence of citizenship that we do not believe to be authentic. "Acceptable evidence of citizenship" means an original of any one of the following documents:

(1) Original or a certified copy of a birth certificate, issued by a State, county, municipality or outlying possession of the U.S. bearing an official seal.

(2) Merchant mariner's document issued by the Coast Guard after February 3, 2003 that shows that the holder is a citizen of the U.S.;

(3) Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service;

(4) Certificate of Naturalization issued by the U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service; or

(5) Unexpired U.S. State Department passport.

* * * * *

■ 7. In § 10.207, revise paragraph (a) to read as follows:

§ 10.207 Requirements for raises of grades of licenses.

(a) *General.* Before any person is issued a raise of grade of license, the applicant must present satisfactory documentary evidence of eligibility with respect to the applicable requirements of §§ 10.201, 10.202, and this section. Each applicant must submit an application as set forth in § 10.105, and, unless exempted under § 10.112, submit the evaluation fee set out in table 10.109 in § 10.109.

* * * * *

■ 8. In § 10.209, revise paragraphs (a)(2) and (e)(3)(i) introductory text to read as follows:

§ 10.209 Requirements for renewal of licenses, certificates of registry, and STCW certificates and endorsements.

(a) * * *

(2) Although the written portion of the application may be initiated by mail, fax, or other electronic means, no application for renewal is complete until the applicant appears in person at a Regional Examination Center (REC), is fingerprinted, and provides evidence of his or her identity in accordance with the requirements of § 10.105.

* * * * *

(e) * * *

(3) *Renewal by mail, fax, or other electronic means.* (i) This paragraph sets forth those required portions of the application that may be submitted by mail, fax, or other electronic means. Although an applicant may initiate, supplement, or complete a renewal by mail, fax, or other electronic means, no application for renewal is complete until the applicant appears in person at an REC, is fingerprinted, and provides evidence of his or her identity in accordance with § 10.205. The following documents must be submitted by the applicant, but may be submitted by mail, fax, or other electronic means:

* * * * *

Dated: January 10, 2006.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 06–369 Filed 1–11–06; 12:20 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Practice and Procedure

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 0 to 19, revised as of October 1, 2005, on page 180, § 1.703 is corrected in paragraph (b) by reinstating the words "oral argument shall file a written statement to that effect setting forth the reasons for his interest in the matter." after the word "the" at the end of the second sentence.

[FR Doc. 06–55500 Filed 1–12–06; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 71, No. 9
Friday, January 13, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–02–003]

RIN 0581–AC25

Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend administrative requirements in the regulations governing the voluntary shell egg, poultry, and rabbit grading programs. The amendments would update the administrative requirements and make minor, nonsubstantive changes for clarity and uniformity of style. This would improve operational efficiency of the grading programs by making the administrative requirements more accurate, clear, consistent, and easier to use.

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250–0259. Also, comments may be faxed to (202) 690–0941 or by Internet to *http://www.regulations.gov*.

State that your comments refer to Docket No. PY–02–003 and note the date and page number of this issue of the **Federal Register**.

Comments may be inspected at the above location between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles Johnson, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

Voluntary shell egg, poultry, and rabbit grading programs are provided for under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. The programs operate under the regulations in 7 CFR part 56 (Voluntary Grading of Shell Eggs) and 7 CFR part 70 (Voluntary Grading of Poultry Products and Rabbit Products).

Supervisory personnel at national, regional, and State levels are responsible for overall operation of these grading programs and implementation of the regulations. Historically, graders were licensed in either shell egg grading or poultry grading, some also in rabbit grading, and they would use only one of the regulations. Today, graders are increasingly cross-utilized for both shell egg and poultry grading, and use both 7 CFR parts 56 and 70.

Both regulations have been in effect since the 1950s and have been amended from time to time as requirements have changed.

While each regulation has its own commodity-specific requirements, both regulations have the same or similar administrative requirements. A recent review of the administrative requirements identified general editorial or housekeeping changes that were needed. These changes would enable program staff at all levels to implement the administrative requirements of both regulations consistently, uniformly, easily, and fairly. The amendments would not change how the administrative requirements are administered, how the commodity-specific requirements are implemented, or the responsibilities of program users.

The amendments would make the administrative requirements more accurate, easier to implement, and easier to follow. For example:

—References to the official U.S. Standards, Grades, and Weight Classes for Shell Eggs and the official U.S. Classes, Standards, and Grades for Poultry and Rabbits would be updated to reflect that they are no longer in the Code of Federal Regulations.

—Punctuation, grammar, capitalization, abbreviations, legal phrases, terms, format, and style would be updated for consistency with current regulatory documents, the U.S. Government Printing Office Style Manual, and the **Federal Register** Document Drafting Handbook. Also, gender-specific pronouns would be changed to gender-neutral pronouns consistent with current writing style.

—Sections would be redesignated to make requirements easier to locate in the regulations.

—Sections about nondiscrimination and political activity for Federal employees would be updated to reflect current requirements.

—The displays of control numbers assigned to information collection requirements by the Office of Management and Budget would be reformatted and Agency names would be changed to their letter symbols to save space and to avoid the repetitive use of certain numbers and words.

—"Poultry Division" would be changed to "Poultry Programs" to conform with organizational changes.

—"Telegraph" would be changed to "electronic means" to reflect current technology.

—A definition for the term "Agricultural Marketing Service or AMS" would be added for consistency with other Agency regulations.

—Duplicate sections would be removed.

—Inconsistencies in the wording of headings and sections common to both regulations would be harmonized, where feasible and practical, to assist program staff at all levels.

—Administrative requirements that have historically been implemented in both grading programs, but are found in only one of the regulations, would be added to the regulation where they are not specified.

Executive Order 12866

This proposed 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.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The purpose of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.201) defines small entities that produce and process poultry as those whose annual number of employees is less than 500 and defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,500 egg laying hens are needed to produce enough eggs to gross $9,000,000.

There are about 376 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the SBA. These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

Pursuant to requirements set forth in the RFA, the AMS has considered the economic impact of this rule on small entities. This rule is editorial and housekeeping in nature. It would affect administrative requirements by updating language and references that are outdated. It would harmonize the administrative content of both regulations. It would not change how the administrative requirements are administered, how commodity-specific requirements are implemented, or the responsibilities of program users. Accordingly, AMS has determined that provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has previously approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control numbers are 0581–0127 and 0581–0128.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 56 and 70 are proposed to be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.1 [Amended]

2. Section 56.1 is amended by:

A. Revising the introductory text.

B. Adding *Acceptable.*

C. Amending *Act* by adding the words ", as amended" immediately following the number "1087".

D. Amending *Administrator* by removing the words "Agricultural Marketing Service of the Department" and adding the word "AMS" in their place and removing the word "his" and adding the words "the Administrator's" in its place.

E. Revising *Applicant.*

F. Amending *Department* by adding the word "(USDA)" immediately following the word "Agriculture".

G. Revising *Grader.*

H. Amending *Grading* or *grading service* by removing the word "Service" and adding the word "AMS" in its place.

I. Amending *Grading certificate* by removing the words "and this" and adding the words "and the regulations in this" in their place.

J. Amending *Holiday* or *legal holiday* by removing the words "shall mean" and adding the word "means" in their place.

K. Adding *Identify.*

L. Revising *Official plant.*

M. Amending *Origin grading* by removing the word "is" and adding the word "means" in its place.

N. Revising *Regulations.*

O. Amending *Sampling* by adding the words "or certification" following the word "grading."

P. Amending *Secretary* by removing the word "his" and adding the words "the Secretary's" in its place.

Q. Removing *Service.*

R. Adding *Shell egg grading service.*

S. Adding *State supervisor* or *Federal-State supervisor.*

T. Adding *United States Standards for Quality of Individual Shell Eggs.*

The revisions and additions read as follows:

§ 56.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:

Acceptable means suitable for the purpose intended by the AMS.

* * * * *

Applicant means any interested person who requests any grading service.

* * * * *

Grader means any Federal or State employee or the employee of a local jurisdiction or cooperating agency to whom a license has been issued by the Secretary to investigate and certify in accordance with the regulations in this part, the class, quality, quantity, or condition of products.

* * * * *

Identify means to apply official identification to products or the containers thereof.

* * * * *

Official plant or *official establishment* means one or more buildings or parts thereof comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for grading service and in which grading is carried on in accordance with the regulations in this part.

* * * * *

Regulations means the provisions in this entire part and such United States standards, grades, and weight classes as may be in effect at the time grading is performed.

* * * * *

Shell egg grading service means the personnel who are actively engaged in the administration, application, and direction of shell egg grading programs and services pursuant to the regulations in this part.

* * * * *

State supervisor or *Federal-State supervisor* means any authorized and designated individual who is in charge of the shell egg grading service in a State.

United States Standards for Quality of Individual Shell Eggs means the official U.S. standards contained in the U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56).

* * * * *

3. The undesignated center heading preceding § 56.3 is revised to read as follows:

General

§ 56.3 [Amended]

4. Section 56.3 is amended by:

A. Removing paragraph (b).

B. Removing paragraph designation "(a)."

C. Removing the words "Agricultural Marketing Service" and adding the word "AMS".

5. The undesignated center heading preceding § 56.4 is removed.

§ 56.4 [Amended]

6. In § 56.4, paragraph (a) is amended by adding the words "for Shell Eggs" immediately following the words "and Weight classes" and removing the words "as contained in subpart C of this part."

7. The section heading for § 56.5 is revised to read as follows:

§ 56.5 Accessibility of product.

* * * * *

8. Section 56.6 is amended by removing the word "applicable" and adding the word "responsible" in its place and adding the words "in accordance with instructions issued by the Administrator" following the word "rendered".

9. A new § 56.7 is added to read as follows:

§ 56.7 Nondiscrimination.

The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

10. Section 56.9 is revised to read as follows:

§ 56.9 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0128.

(b) *Display.*

Sections where information collection requirements are identified and described:

56.3(a)	56.25	56.52(b)(3)(ii)
56.4(a)	56.26	56.53
56.10(a)	56.30	56.54(b)(1)
56.11	56.31(a)	56.54(b)(3)(ii)
56.12	56.35(b)	56.56(a)
56.17(b)	56.35(c)	56.57
56.18	56.35(d)	56.58
56.21(a)	56.37	56.60
56.21(b)	56.52(a)(1)	56.62
56.21(c)	56.52(a)(4)	56.76(f)(7)
56.23	56.52(b)(1)	56.76(h)
56.24		

11. The undesignated center heading preceding § 56.10 is revised to read as follows:

Licensed and Authorized Graders

12. Section 56.10 is revised to read as follows:

§ 56.10 Who may be licensed and authorized.

(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the shell egg grading service of the AMS or any other designated officer.

(c) Any person who is employed at any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the "U.S. Standards for Quality of Individual Shell Eggs," with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a "quality assurance inspector" in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

13. Section 56.11 is revised to read as follows:

§ 56.11 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

14. Section 56.12 is revised to read as follows:

§ 56.12 Suspension of license; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform grading service may, whenever such action is deemed necessary to assure that any grading service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension or revocation to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing with the Secretary, supported by any argument or evidence that the licensee may wish to offer as to why their license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.

15. Section 56.13 is revised to read as follows:

§ 56.13 Cancellation of license.

Upon termination of the services of a licensed grader, the licensee shall surrender their license immediately for cancellation.

§ 56.14 [Amended]

16. Section 56.14 is amended by removing the word "he" and adding the words "the licensee" in its place.

17. Section 56.15 is revised to read as follows:

§ 56.15 Political activity.

Federal graders may participate in certain political activities, including management of and participation in political campaigns, in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however, the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

18. Section 56.16 is revised to read as follows:

§ 56.16 Identification.

Each grader shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

19. A new § 56.19 is added to read as follows:

§ 56.19 Prerequisites to grading.

Grading of products shall be rendered pursuant to the regulations in this part and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

20. The undesignated center heading preceding § 56.20 is revised to read as follows:

Application for Grading Service

* * * * *

21. Section 56.20 is revised to read as follows:

§ 56.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to any authorized agent of the United States, any State, county, municipality, or common carrier.

22. Section 56.22 is revised to read as follows:

§ 56.22 Filing of application.

An application for grading service shall be regarded as filed only when made pursuant to the regulations in this part.

23. In § 56.24, the section heading and paragraph (e) are revised to read as follows:

§ 56.24 Rejection of application.

* * * (e) whenever the applicant, after an initial survey has been made in accordance with the regulations, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time;

* * * * *

24. The section heading for § 56.25 is revised and the word "Service" is removed and the word "AMS" is added in its place to read as follows:

§ 56.25 Withdrawal of application.

* * * * *

§ 56.27 [Amended]

25. In § 56.27, immediately following the word "practicable" the words "and subject to the availability of qualified graders" are added.

26. Section 56.29 is added to read as follows:

§ 56.29 Suspension or withdrawal of plant approval for correctable cause.

(a) Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for:

(1) Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness;

(2) The use of operating procedures which are not in accordance with the regulations in this part; or

(3) Alterations of grading facilities or equipment which have not been approved in accordance with the regulations in this part.

(b) Whenever it is feasible to do so, written notice in advance of a suspension shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the suspension action shall be promptly confirmed in writing and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader can be made available. During such period of suspension, grading service shall not be rendered. However, the other provisions of the regulations pertaining to providing grading service on a resident basis will remain in effect unless such service is terminated in accordance with the provisions of this part.

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed or the official identification completely obliterated or sealed in a manner acceptable to the AMS.

(d) In any case where grading service is withdrawn under this section, the person concerned may thereafter apply for grading service as provided in §§ 56.20 through 56.29 of these regulations.

27. The undesignated center heading preceding § 56.30 is removed.

§ 56.30 [Redesignated as § 56.33]

28. Section 56.30 is redesignated as § 56.33.

29. A new § 56.30 is added to read as follows.

§ 56.30 Application for grading service in official plants; approval.

Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. An application for grading service to be rendered in an official plant shall be approved according to the following procedure: When application has been filed for grading service, as aforesaid, the State supervisor or the supervisor's assistant shall examine the grading office, facilities, and equipment and specify any facility or equipment modifications needed for the service. When the plant survey has been completed and approved in accordance with the regulations in this part, service may be installed.

30. The undesignated center heading preceding § 56.31 is revised to read as follows:

Reports

* * * * *

§ 56.31 [Redesignated as § 56.68]

31. Section 56.31 is redesignated as § 56.68.

32. A new § 56.31 is added to read as follows:

§ 56.31. Report of grading work.

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

§ 56.32 [Redesignated as § 56.38]

33. Section 56.32 is redesignated as § 56.38.

34. A new § 56.32 is added to read as follows:

§ 56.32 Information to be furnished to graders.

The applicant for grading service shall furnish to the grader rendering such service such information as may be required for the purposes of this part.

§ 56.35 [Amended]

35. In § 56.35, paragraph (c) is amended by removing the words "with the labeling on" and adding the words "on the labeling of" in their place.

36. The section heading for § 56.36 is revised to read as follows:

§ 56.36 Form of grademark and information required.

* * * * *

37. The section heading for § 56.45 is revised to read as follows:

§ 56.45 Payment of fees and charges.

* * * * *

§ 56.45 [Amended]

38. In § 56.45, paragraph (b) is amended by removing the word "Service" and adding the word "AMS" in its place.

§ 56.46 [Amended]

39. In § 56.46, paragraph (c) the word "Supervisor" is revised to read "supervisor."

§ 56.49 [Amended]

40. In § 56.49, the first sentence is amended by removing the word "service" the first time it appears and adding the word "AMS" in its place.

41. The section heading for § 56.52 is revised to read as follows:

§ 56.52 Charges for continuous grading performed on a resident basis.

* * * * *

§ 56.52 [Amended]

42. Section 56.52 is amended by removing the words "Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "the AMS")" in paragraph (a) and adding the word "AMS" in their place.

§ 56.54 [Amended]

43. In § 56.54, paragraph (a) is amended by removing the words "Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "AMS")" and adding the word "AMS" in its place and removing the words "part 55 or" in paragraph (b)(5).

44. Section 56.55 is revised to read as follows:

§ 56.55 Forms.

Grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

45. The section heading for § 56.56 is revised to read as follows:

§ 56.56 Issuance.

* * * * *

§ 56.56 [Amended]

46. Section 56.56 is amended by:

A. Revising the word "Service" to read "AMS" in paragraph (a) the first sentence.

B. Revising the word "him" to read "such grader" in paragraph (a) second sentence.

C. Revising the word "his" to read "their" and the word "him" to read "such grader" in paragraph (b) first sentence.

D. Revising the words "National Supervisor" to read "national supervisor" in paragraph (b) second sentence.

E. Revising the words "both his own" to read "the applicant's designee" in paragraph (b) last sentence.

47. The section heading for § 56.57 is revised to read as follows:

§ 56.57 Disposition.

* * * * *

§ 56.57 [Amended]

48. In § 56.57, the words "person designated by him" are removed and the words "the applicant's designee" are added in their place.

§ 56.61 [Amended]

49. In § 56.61, paragraph (b) is amended by adding the words "determination of the" following the words "with the" and adding the words "with the regional director" following the word "request"

50. § 56.64, paragraph (a) is revised to read as follows:

§ 56.64 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 56.61(a) shall be made by the grader's immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor.

* * * * *

51. A new undesignated center heading is added following § 56.66 to read as follows:

Denial of Service

§ 56.66 [Amended]

52. In § 56.66, the word "grade mark" is revised to read "grademark"

53. Newly designated § 56.68 is revised to read as follows:

§ 56.68 Debarment.

The acts or practices set forth in §§ 56.69 through 56.74, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

54. Sections 56.69 through 56.74 are added to read as follows:

§ 56.69 Misrepresentation, deceptive, or fraudulent act or practice.

Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(a) The making or filing of an application for any grading service, appeal, or regrading service;

(b) The making of the product accessible for sampling or grading;

(c) The making, issuing, or using or attempting to issue or use any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(d) The use of the terms "United States" or "U.S." in conjunction with the grade of the product;

(e) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

§ 56.70 Use of facsimile forms.

Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

§ 56.71 Willful violation of the regulations.

Any willful violation of the regulations in this part or the act.

§ 56.72 Interfering with a grader or employee of the AMS.

Any interference with or obstruction or any attempted interference or obstruction of or assault upon any graders, licensees, or employees of the AMS in the performance of their duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the AMS or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the AMS or the offering or entering into a private contract or agreement with an employee of the AMS for any services to be rendered while employed by the AMS.

§ 56.73 Misleading labeling.

The use of the terms "Government Graded", "Federal-State Graded", or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U.S. grade of the product as determined by an authorized grader.

§ 56.74 Miscellaneous.

The existence of any of the conditions set forth in § 56.24 constituting the basis for the rejection of an application for grading service.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCT

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

Authority: 7 U.S.C. 1621–1627.

56. The undesignated center heading preceding § 70.1 is revised to read as follows:

Definitions

§ 70.1 [Amended]

57. Section 70.1 is amended by:

A. Revising the section heading and the introductory text.

B. Amending *Acceptable* by removing the words "and acceptable to the Service" and adding the words "by the AMS" in their place.

C. Amending *Administrator* by removing the words "Agricultural Marketing Service of the Department" and the word "AMS" in their place and removing the word "his" and adding the words "the Administrator's" in its place.

D. Adding *Agricultural Marketing Service.*

E. Revising *Chief of the Grading Branch.*

F. Amending *Class* by adding the words "or species" after the word "kind".

G. Amending *Department* by adding the word "(USDA)" after the word "Agriculture".

H. Amending *Grading certificate* by removing the words "pursuant to the regulations" and adding the words "pursuant to the Act and the regulations".

I. Amending *Holiday* or *Legal Holiday* by removing the words "Legal Holiday," and adding the words "legal holiday" in their place and by removing the words "shall mean" and adding the word "means" in their place.

J. Adding *Interested party.*

K. Revising *National supervisor;*

L. Adding *Sampling;*

M. Amending *Secretary* by removing the word "his" and adding the words "the Secretary's" in its place.

N. Removing *Service.*

O. Adding *United States Classes, Standards, and Grades for Poultry.*

P. Adding *United States Classes, Standards, and Grades for Rabbits.*

The revisions and additions read as follows:

§ 70.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:

* * * * *

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

* * * * *

Chief of the Grading Branch means Chief of the Grading Branch, Poultry Programs, AMS.

* * * * *

Interested party means any person financially interested in a transaction involving any grading service.

* * * * *

National supervisor means the officer in charge of the poultry grading service of the AMS, and other employees of the Department as may be designated by the national supervisor.

* * * * *

Sampling means the act of taking samples of any product for grading or certification.

* * * * *

United States Classes, Standards, and Grades for Poultry (AMS 70.200 et seq.) means the official U.S. classes, standards, and grades for poultry that are maintained by and available from Poultry Programs, AMS.

United States Classes, Standards, and Grades for Rabbits (AMS 70.300 et seq.) means the official U.S. classes, standards, and grades for rabbits that are maintained by and available from Poultry Programs, AMS.

§ 70.2 [Amended]

58. In § 70.2, paragraph (c) is amended by revising the word "Grade" to read "grade".

59. An undesignated center heading is added preceding § 70.3 to read as follows:

General

60. Section 70.3 is revised to read as follows:

§ 70.3 Administration.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the act and the regulations in this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, grading, and processing, techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The AMS and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

61. Section 70.5 is revised to read as follows:

§ 70.5 Nondiscrimination.

The conduct of all services and the licensing of graders under these regulations shall be accomplished without regard to race, color, national origin, religion, age, sex, disability, political beliefs, sexual orientation, or marital or family status.

62. Section 70.6 is revised to read as follows:

§ 70.6 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0127.

(b) *Display.*

Sections where information collection requirements are identified and described:

70.3	70.36	70.76(b)(3)(ii)
70.4(a)	70.38(c)	70.77(a)(1)
70.5	70.38(d)	70.77(a)(4)
70.18	70.39	70.77(b)(1)
70.20(a)	70.40	70.77(b)(3)(ii)
70.22	70.50	70.91(a)
70.31(a)	70.61	70.91(c)
70.31(b)	70.62	70.92
70.34	70.73	70.101
70.35	70.76(b)(1)	70.102

63. A new § 70.8 is added to read as follows:

§ 70.8 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

64. The undesignated center heading preceding § 70.10 is removed.

65. The section heading for § 70.10 is revised to read as follows:

§ 70.10 Basis of grading service.

* * * * *

66. Section 70.10 is amended by:

A. Designating the undesignated text as paragraph (a).

B. Revising the words "classes", "standards" and "grades" to read "Classes", "Standards" and "Grades", respectfully.

C. Removing the words "as contained in subparts B and C of this part" and adding the words "for Poultry and Rabbits" in their place.

67. Section 70.13 is revised to read as follows:

§ 70.13 Ready-to-cook poultry and rabbits and specified poultry food products.

(a) Ready-to-cook poultry or rabbit carcasses or parts or specified poultry food products may be graded only if they have been inspected and certified by the poultry inspection service of the Department, or inspected and passed by any other inspection system which is acceptable to the Department.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, and when poultry food products have been prepared under the

supervision of a grader, when necessary the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

(c) Only when ready-to-cook rabbit carcasses or parts have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, may the container or the individual carcass or part be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

§ 70.14 [Amended]

68. In § 70.14, the words "U.S. Department of Agriculture" are removed and the word "Department" is added in their place.

69. Section 70.15 is revised to read as follows:

§ 70.15 Equipment and facilities for graders.

Equipment and facilities to be furnished by the applicant for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

(a)(1) An accurate metal stem thermometer.

(2) A drill with a steel bit to drill holes in frozen product for inserting the metal thermometer stem to determine temperature.

(3) Scales graduated in tenths of a pound or less for weighing carcasses, parts, or products individually in containers up to 100 pounds, and test weights for such scales.

(4) Scales graduated in one-pound graduation or less for weighing bulk containers of poultry and test weights for such scales.

(b) Furnished office space, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the national supervisor.

70. The undesignated center heading preceding § 70.20 is revised to read as follows:

Licensed and Authorized Graders

71. The section heading for § 70.20 is revised to read as follows:

§ 70.20 Who may be licensed and authorized.

* * * * *

72. In § 70.20, "paragraph (b) the words "Agricultural Marketing Service" are removed and the word "AMS" is added in their place.

§ 70.21 [Amended]

73. Section 70.21 is amended by:

A. Removing the words "he deems such action" and adding the words "such action is deemed" in their place.

B. Removing the words "he may wish to offer as to why his" and adding the words "the licensee may wish to offer as to why their" in their place.

C. Removing the words "he deems such action" and adding the words "such action is deemed" in their place.

74. Section 70.22 is revised to read as follows:

§ 70.22 Surrender of license.

Each license which is suspended or revoked shall immediately be surrendered by the licensee to the office of grading servicing the area in which the license is located.

75. Section 70.23 is revised to read as follows:

§ 70.23 Identification.

Each grader shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

76. Section 70.24 is revised to read as follows:

§ 70.24 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

77. Section 70.25 is revised to read as follows:

§ 70.25 Political activity.

Federal graders may participate in certain political activities, including management and participation in political campaigns in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however, the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

78. A new § 70.26 is added to read as follows:

§ 70.26 Cancellation of license.

Upon termination of the services of a licensed grader, the licensee shall surrender their license immediately for cancellation.

79. Section 70.30 is revised to read as follows:

§ 70.30 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to any authorized agent of the United States, any State, county, municipality, or common carrier.

§ 70.31 [Amended]

80. In § 70.31, paragraph (a) is amended by removing the words "basis may" and the words "basis shall" in their place and removing the word "telegraph" and adding the words "any electronic means" in its place.

§ 70.34 [Amended]

81. Section 70.34 is amended by removing the word "his" and adding the words "the supervisor's" in its place.

§ 70.35 [Amended]

82. Section 70.35 is amended by:

A. Removing the word "or" in paragraph (e).

B. Adding new paragraphs (g) and (h) to read as follows:

§ 70.35 Rejection of application.

* * * (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

* * * * *

83. In § 70.38, paragraph (c) is revised to read as follows:

§ 70.38 Suspension or withdrawal of plant approval for correctable cause.

* * * * *

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings and Grading Service (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon the operator's written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension

shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plan, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the AMS.

* * * * *

84. A new § 70.39 is added to read as follows:

§ 70.39 Form of application.

Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled.

85. Section 70.40 is revised to read as follows:

§ 70.40 Debarment.

The acts or practices set forth in §§ 70.41 through 70.46, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

86. The section heading for § 70.41 is revised to read as follows:

§ 70.41 Misrepresentation, deceptive, or fraudulent act or practice.

* * * * *

§ 70.41 [Amended]

87. In § 70.41, paragraph (b) is amended by adding the words "sampling or" after the word "for" and adding the word "or" after the word "product".

§ 70.44 [Amended]

88. In § 70.44, the word "his" is revised to read "their".

89. A new § 70.56 is added to read as follows:

§ 70.56 Grading requirements of poultry and rabbits identified with official identification.

(a) Poultry and rabbit products to be identified with the grademarks illustrated in § 70.51 must be individually graded by a grader or by authorized personnel pursuant to § 70.20 and thereafter check graded by a grader.

(b) Poultry and rabbit products not graded in accordance with paragraph (a) of this section may be officially graded on a sample basis and the shipping containers may be identified with grademarks which contain the words "Sample Graded" and which are approved by the Administrator.

90. Section 70.60 is revised to read as follows:

§ 70.60 Report of grading work.

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

91. Section 70.62 is revised to read as follows:

§ 70.62 Report of violations.

Each grader shall report, in the manner prescribed by the Administrator, all violations and noncompliances under the act and the regulations in this part of which such grader has knowledge.

§ 70.70 [Amended]

92. In § 70.70, paragraph (b) is amended by removing the words "Agricultural Marketing Service" and adding the word "AMS" in their place.

§ 70.71 [Amended]

93. In § 70.71, the word "Supervisor" is revised to read "supervisor" in paragraph (c).

94. The section heading for § 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading or review of a grader's decision.

* * * * *

§ 70.72 [Amended]

95. In § 70.72, the words "or examination" are removed each time they appear, and removing the words "will be borne" and adding the words "shall be borne" in their place.

§ 70.76 [Amended]

96. In § 70.76, paragraph (a) is amended by removing the words "the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "AMS")" and adding the word "AMS" in their place.

§ 70.77 [Amended]

97. In § 70.77, paragraph (a) is amended by removing the words "Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "AMS")" and adding the word "AMS" in their place.

98. The undesignated center heading preceding § 70.80 is removed.

§ 70.80 [Amended]

99. The section heading for § 70.80 is removed and the undesignated text is designated as § 70.10, paragraph (b).

§ 70.81 [Removed]

100. Section 70.81 is removed.

§ 70. 90 [Amended].

101. Section 70.90 is amended by adding the words "and sampling report forms" after the words "Grading certificates".

§ 70.92 [Removed]

102. Section 70.92 is removed.

103. The section heading for § 70.91 is revised to read as follows:

§ 70.91 Issuance.

* * * * *

§ 70.91 [Amended]

104. In § 70.91:

A. Paragraph (a) is amended by removing the word "him" and adding the words "such grader" in its place.

B. Paragraph (b) is revised.

C. Paragraph (c) is redesignated as § 70.92.

The revision reads as follows:

§ 70.91 Issuance.

* * * * *

(b) *Other than resident grading.* Each grader shall, in person or by an authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided,* That the certificate is prepared from an official memorandum of grading signed by the grader: *And provided further,* That a notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign their own name and the grader's name, e.g., "John Doe by Richard Roe."

* * * * *

§ 70.92 [Amended]

105. Newly designated § 70.92 is amended by adding a new section heading titled "Disposition." and removing the paragraph designation (c).

106. Section 70.93 is revised to read as follows:

§ 70.93 Advance information.

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or transmitted by any electronic means to the applicant, or to

the applicant's designee, at the applicant's expense.

§ 70.104 [Amended]

107. In § 70.104, paragraph (a) is amended by removing the words "a licensed grader" and adding the words "one or more licensed graders" in their place and removing the words "other than the grader whose grading or decision is being appealed".

108. In § 70.105, paragraphs (a) and (b) are revised to read as follows:

§ 70.105 Procedures for appeal gradings.

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of containers selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 70.80.

* * * * *

Dated: January 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–258 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4938–N–02]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: This notice announces a two-day session of the negotiated rulemaking committee that developed HUD's February 25, 2005, proposed rule for public comment to revise the Indian Housing Block Grant (IHBG) program allocation formula. Through the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The public comment period on the proposed rule closed on April 26, 2005. The purpose of the two-day session is to provide the negotiated rulemaking committee members with the opportunity to review and consider responses to the public comments received on the February 25, 2005, proposed rule.

DATES: The session will be held on Tuesday, January 31, 2006, and Wednesday, February 1, 2006. On each day, the session will begin at approximately 8:30 am, and will adjourn at approximately 6 pm.

ADDRESSES: The sessions will take place at the Grand Hyatt Denver hotel, 1750 Welton Street, Denver, Colorado 80202; telephone: (303) 295–1234 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On February 25, 2005 (70 FR 9490), HUD published a proposed rule for public comment to make several revisions to the Indian Housing Block Grant (IHBG) program allocation formula authorized under section 302 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

Through the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using an allocation formula (IHBG Formula) that was developed jointly by HUD and Indian tribes using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). A regulatory description of the IHBG Formula is located in subpart D of the IHBG program regulations codified at 24 CFR part 1000.

HUD negotiated the February 25, 2005, proposed rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act. The proposed regulatory changes reflect the consensus decisions reached by HUD and the tribal representatives on ways to improve and clarify the current regulations governing the IHBG Formula. Additional details regarding the proposed regulatory revisions are provided in the preamble to the February 25, 2005, proposed rule. The public comment period on the proposed rule closed on April 26, 2005.

This notice announces a two-day session of the negotiated rulemaking committee that developed the February 25, 2005, proposed rule. Since the negotiated rulemaking committee has concluded its negotiations, the session will not involve the re-opening of negotiations on the consensus and nonconsensus items identified in the preamble to the February 25, 2005, proposed rule and thoroughly negotiated during the committee meetings that developed the proposed regulatory changes. Rather, the purpose of the two-day session is to provide the negotiated rulemaking committee members with the opportunity to review and consider responses to the public comments received on the February 25, 2005, proposed rule.

The two-day session will take place as described in the **DATES** and **ADDRESSES** section of this document. The session will be open to the public; however, public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting to the extent time permits.

Dated: January 9, 2006.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. E6–362 Filed 1–12–06; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–041]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard will hold a public meeting to provide a forum for citizens to provide oral comments relating to the drawbridge operation regulations for the Dominion Boulevard (US 17) Bridge; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA. The meeting will be open to the public.

DATES: This public meeting will be held from 3 p.m. to 8 p.m. on March 1, 2006, at the Chesapeake Central Library in Chesapeake, VA. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 28, 2006.

ADDRESSES: The Coast Guard public meeting will be held at the Chesapeake Central Library, 298 Cedar Road,

Chesapeake, VA 23322–5598. Send written material and requests to make oral presentations to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. You can also send your comments via fax at (757) 398–6334 or by e-mail at *waverly.w.gregory@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: This notice of meeting is in response to the Notice of Proposed Rulemaking published in the **Federal Register** on May 10, 2005, (70 FR 24492) and the Interim Rule with request for comment published in the **Federal Register** on August 19, 2005, (70 FR 48637). The purpose of this public meeting is to provide an opportunity for citizens to provide oral or written comments regarding the changes to the regulations that govern the operation of the Dominion Boulevard (US 17) Bridge across the Southern Branch of the Elizabeth River, at Atlantic Intracoastal Waterway mile 8.8, at Chesapeake, Virginia.

Agenda of Meeting

The agenda includes the following:
(1) Introduction of panel members.
(2) Overview of meeting format.
(3) Background on the proposed and interim rulemakings.
(4) Statements from citizens.

Statements may be delivered in written form at the public meeting and made part of the docket or delivered orally not to exceed 5 minutes.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the meeting coordinator at the address listed under **ADDRESSES** by February 28, 2006.

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, contact the meeting coordinator as soon as possible.

Dated: January 5, 2006.

Larry L. Hereth,

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

[FR Doc. E6–338 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04-OAR–2005-GA–0005–200537e; FRL–8021–2]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published November 29, 2005 (70 FR 71446). On November 29, 2005, EPA proposed to approve a correction to the State Implementation Plan (SIP) for the State of Georgia regarding the State's general "nuisance" rule. EPA has determined that this rule, Georgia Rule 391–3–1.02(2)(a)1, was erroneously incorporated into the SIP. EPA is proposing to remove this rule from the approved Georgia SIP because the rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS). At the request of several commentors, EPA is extending the comment period through January 23, 2006.

DATES: Written comments must be received on or before January 23, 2006.

ADDRESSES: Comments should be submitted to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9043. E-mail: *lakeman.sean@epa.gov.* Additional instructions to comment can be found in the notice of proposed rulemaking published November 29, 2005 (70 FR 71446).

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

Dated: January 6, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–355 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 9
Friday, January 13, 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

Forest Service

Lolo National Forest; Montana; Montana Snowbowl Ski and Summer Resort Expansion

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Lolo National Forest will prepare an Draft Environmental Impact Statement (EIS) through a third-party contractor to evaluate and disclose the environmental consequences of the proposed expansion of the Montana Snowbowl Ski Area (MSB) in Missoula County, Montana. The proposed expansion would increase the area of ski runs from approximately 240 to 406 acres, all of which would be on the National Forest. New infrastructure would include five lifts and three skier services buildings totaling about 7,000 square feet. The new permit would also allow summer mountain biking and hiking on the new expansion area of TV Mountain. The expansion may require a Forest Plan amendment since it would include portions of Management Areas 16 and 25 which do not specifically include developed recreation.

DATES: Comments concerning the scope of the analysis should be received by February 15, 2006. The draft environmental impact statement is expected to be available for public review in October 2006 and the final environmental impact statement is expected in February 2007.

ADDRESSES: Submit written or oral comments to Stephanie Lauer, PBS&J, 1120 Cedar Street, Missoula, MT 59802, phone (406) 721–0354. You may also submit comments via e-mail—*slauer@pbsj.com*.

FOR FURTHER INFORMATION CONTACT:

1. Don Stadler, East Zone NEPA Coordinator/IDT Leader at the Missoula Ranger District, Building 24A, Fort Missoula, Missoula, MT 59804 at (406) 329–3731; or via e-mail—*dstadler@fs.fed.us*.

2. Barry Dutton, Project Manager or Stephanie Lauer, Assistant Project Manager at PBS&J, 1120 Cedar Street, Missoula, MT 59802 at (406) 721–0354; or via e-mail—*bdutton@pbsj.com* or *slauer@pbsj.com*.

SUPPLEMENTARY INFORMATION: Missoula Snowbowl Ski and Summer Resort has operated on Lolo NF lands under a SUP since 1961. Their present SUP was granted under the authority of the National Forest Ski Area Act of 1986 (16 U.S.C. 497b). The Act authorizes the U.S. Forest Service to issue team ski area permits "for the use and occupancy of suitable nordic and alpine skiing operations and purposes" (Section 3(b)). The Act also states that a permit shall encompass such acreage as the Forest Service "determines sufficient and appropriate to accommodate the permittee's need for ski operations and appropriate ancillary facilities" (section 3(b)). Montana Snowbowl Ski and Summer Resort presently has a 40-year permit. The Lolo National Forest has received a proposed, revised Master Plan from Montana Snowbowl, Inc. The revised Master Plan was reviewed by the Lolo National Forest on December 6, 2004. The Lolo National Forest Plan is currently in the process of revision.

Purpose and Need for Action

The expansion is needed to continue safe, high quality recreation and provide the financial capabilities to continue to make improvements and upgrades to the facilities and operation of Montana Snowbowl Ski and Summer Resort.

Proposed Action

Montana Snowbowl, Inc. proposes to expand the Missoula Snowbowl Ski and Summer Resort north of Missoula, Montana. The project would be implemented in 2007 and be completed over a ten-year period. The proposed action is located within and adjacent to the existing ski area, approximately 12 miles north of Missoula, Montana. The existing resort is mainly on the north and west slopes of Big Sky Mountain. The proposed expansion area is mainly on TV Mountain, adjacent to and immediately west of the existing resort. TV Mountain is the site of the original ski area that operated during the 1950s and evolved into the present day MSB. The proposed expansion area is located in the upper end of the Butler Creek and La Valle Creek drainages. Butler Creek and LaValle Creek are tributaries to the Clark Fork River. No inventoried roadless areas would be affected by the proposed expansion.

The current Montana Snowbowl Ski and Summer Resort SUP includes approximately 1,138 acres of Forest Service lands. The proposed action would increase the SUP areas by 1,088 acres, from 1,138 to approximately 2,226 acres. The resort also encompasses an additional 80 acres of private land owned by Montana Snowbowl, Inc. The existing resort and proposed expansion project are located on the Lolo National Forest, which is the lead agency for the project.

The proposed expansion would increase the area of ski runs from approximately 240 to 406 acres, all of which would be on the National Forest. The proposed expansion takes advantage of existing openings wherever possible. Approximately 114 acres of new clearing would be required. New infrastructure would include five lifts and three skier services buildings totaling 7,000 square feet. The new permit would also allow summer mountain biking and hiking on the new expansion area of TV Mountain. The expansion may require a Forest Plan amendment since it would include portions of Management Areas 16 and25 which do not specifically include development recreation. The Lolo National Forest Plan is presently being revised.

Responsible Official

The responsible official for the Montana Snowbowl Ski and Summer Resort Expansion is Deborah L. R. Austin, Forest Supervision, Lolo National Forest.

Nature of Decision To Be Made

The Forest Supervisor of the Lolo National Forest will decide whether to grant a change to the existing Montana Snowbowl Ski and Summer Resort SUP to include an additional 1,088 acres and include provisions to clear additional ski runs, construct five new lifts, three new skier service buildings, and include summer mountain biking and hiking.

Scoping Process

The federal Forest Service is the lead agency for preparing this EIS. The EIS will be prepared through a third-party contractor. The Forest Service will consult with the United States Fish and Wildlife Service when making this decision. The scoping process will include, at a minimum, one public meeting, scoping mailings, and public notices in newspapers of record. The responsible official will make a decision on this proposal after considering comments, responses, environmental consequences, applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision (ROD).

Permits or Licenses Required

A change to the Montana Snowbowl Ski and Summer Resort SUP would be required as part of the proposed action.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inv.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the draft environmental impact statement comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaning fully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal, and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 3, 2006.

Gary Garthwait,

Acting Forest Supervisor.

[FR Doc. 06–226 Filed 11–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on February 7, 2006 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 7, 2006 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The RAC will discuss the next steps for the Coast to Crest and Coast to Caves Trailway as well as the process for requesting proposals for fiscal year 2007 projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 9, 2006.

Jeff Walter,

Forest Supervisor.

[FR Doc. 06–314 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for New Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intent to request approval for designated official agencies to complete FGIS Form 921–2, Inspection Report—Insects in Grain in order to facilitate the transfer of information to the Animal and Plant Health Inspection Service for phytosanitary certification. Currently, FGIS field offices, delegated States, and designated agencies inspect and certify grain for insects. FGIS field offices and delegated States provide insect information for export grain vessels to APHIS on FGIS–921–2 for APHIS issuance of a phytosanitary certificate. This request will enable official agencies to provide similar insect information for export grain shipped in trucks, railcars, and containers loaded at interior locations to APHIS.

DATES: Comments must be submitted by March 14, 2006.

ADDRESSES: We invite you to submit comments on this notice. 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.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection packag4e and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For information on the collection and use of this information, contact Martin Begley at telephone (202) 720–0277, or via e-mail *martin.a.begley@usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is responsible for inspecting plants and plant products offered for export, and certifying their freedom from plant pests in accordance with the phytosanitary requirements of foreign countries. To help shippers and other interested parties obtain phytosanitary inspection services at export port locations, GIPSA and APHIS entered into an agreement under which official inspection personnel transmit grain inspection information to APHIS. The agreement, procedures, and requirements are outlined in FGIS Directive 9180.35, dated May 1, 1997, *http://151.121.3.117/reference-library/directives/9180–35.pdf*.

To facilitate the issuance of phytosanitary certificates for export grain loaded into trucks, railcars, and containers at interior locations, APHIS and GIPSA expanded the existing agreement to permit official agencies, authorized by GIPSA to perform USDA recognized grain inspection services, to transmit grain inspection information to APHIS for phytosanitary certification purposes. The agreement is outlined in FGIS Directive 9180.34, dated May 24, 2005, which is available at: *http://151.121.3.117/reference-library/directives/9180–34.pdf*). Under the new agreement, FGIS Form 921–2 would be used by designated official agencies to transmit grain inspection information to APHIS for export grain loaded at interior shipping points.

Title: Inspection Report—Insects in Grain.

OMB Number: 0580—New.

Expiration Date of Approval: New.

Type of Request: New information collection.

Abstract: The United States Grain Standards Act (7 U.S.C. 71 *et seq.*) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) provide that USDA inspect, certify and identify the class, quality, quantity and condition of grain and other agricultural products shipped or received in interstate and foreign commerce.

Estimate of Burden: Public reporting and record keeping burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Official grain inspection agencies.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 62.

Estimated Total Annual Burden on Respondents: 180 hours.

Upon OMB approval, this package will be merged into package 0580–0013.

Comments: Comments are invited on: (a) Whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 06–279 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: RUS Form 479, "Financial and Statistical Report for Telecommunications Borrowers."

OMB Control Number: 0572–0031.

Type of Request: Revision of an existing information collection package.

Abstract: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, broadband, telecommunications and

water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid.

This collection of information previously covered RUS Form 479, "Financial and Statistical Report for Telecommunications Borrowers." The data collected on the Form 479 is known as Operating Report data. The agency has developed the USDA Data Collection System which is an electronic system for collecting Operating Report Data for Electric, Telecommunications, and Broadband borrowers. As the agency is moving from a form-based collection to an electronic system for data collection, the name of this information collection will be revised to Operating Reports for Telecommunications and Broadband Borrowers. The purposes for collecting the data remain unchanged, which is to provide RUS with vital financial information needed to ensure the maintenance of the security for the Government's loans; and statistical data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the Rural Electrification Act (RE Act) of 1936. The primary purpose of the RUS Form 479 was to provide RUS with financial information to ensure loan security consistent with due diligence. Secondary to this purpose was the use of the form for a variety of financial and statistical based studies performed throughout the year. These functions are essential to protect loan security and to achieve objectives of the RE Act. New to this collection is the requirement for Broadband Borrowers to submit Operating Report Data. Both the Operating Report for Telecommunications Borrowers and the Operating Report for Broadband Borrowers are required by the loan contract and provide RUS with vital financial information needed to ensure the maintenance of the security for the Government's loans and service data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the RE Act of 1936.

Also added to this collection is the use of a new RUS Form 674, "Certificate of Authority to Submit or Grant Access to Data." This form has been developed for use in collecting information that will allow RUS Electric, Telecommunications, and Broadband program borrowers to file electronic Operating Reports with the agency using the new USDA Data Collection System. RUS Form 674, accompanied by a Board Resolution, will identify the name and USDA eAuthentication ID for a certifier and security administrator that will have access to the USDA Data Collection System for purposes of filing electronic Operating Reports.

Estimate of Burden: This collection of information is estimated to average 1.72 hours per response.

Respondents: Business or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 1,290.

Estimated Number of Responses per Respondent: 1.64.

Estimated Total Annual Burden on Respondents: 3,643.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 5, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–329 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: February 12, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Battery Nonrechargeable.
NSN: 6135–01–521–0378—AAA Lithium.
NPA: Eastern Carolina Vocational Center, Inc., Greenville, NC.
Contracting Activity: Defense Supply Center Richmond, Richmond, VA.

Services

Service Type/Location: Janitorial/Custodial, Grand Prairie Reserve Center Complex, Bldgs. 301, 348, 355, 8001, and 8003, 310 Army Drive, Grand Prairie, TX.
NPA: Goodwill Industries of Fort Worth, Inc., Fort Worth, TX.
Contracting Activity: 90th Regional Readiness Command, North Little Rock, AR.

Service Type/Location: Janitorial/Custodial, Social Security Administration, 4020 Durand Avenue, Racine, WI.

NPA: Lakeside Curative Services, Inc., Racine, WI.

Contracting Activity: GSA, Public Buildings Service, Region 5, Chicago, IL.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–322 Filed 1–12–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List product previously furnished by such agency.

DATES: *Effective Date:* February 12, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On November 10, 2005 (70 FR 68396) and November 18, 2005 (70 FR 69934), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Cup, Disposable (For Defense Supply Center Philadelphia Only).
NSN: 7350–01–411–5265 (9 oz Tall-style).
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, LA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Product/NSN: Kit, Helicopter Landing Zone.
NSN: 6230–01–513–2533—Kit, Helicopter Landing Zone.
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, NJ.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Custodial & Grounds Maintenance, Bureau of Customs and Border Protection, Rio Grande Valley Sector Headquarters, 4400 South Expressway 281, Edinburg, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: Department of Homeland Security, Washington, DC.

Service Type/Location: Grounds Maintenance, El Centro Service Processing Center, 1115 N. Imperial Avenue, El Centro, CA.
NPA: ARC-Imperial Valley, El Centro, CA.
Contracting Activity: Department of Homeland Security, Laguna Niguel, CA.

Deletion

On November 18, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 69934) of proposed deletion to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Plug, Ear, Hearing Protection.
NSN: 6515–01–492–3625 (one-color).
NPA: New Dynamics Corporation, Middletown, NY.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, TX.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–323 Filed 1–12–06; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2004/2005 New Shipper Review

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

EFFECTIVE DATE: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Benjamin Kong; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–7907, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order covering honey from the People's Republic of China ("PRC"). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). The Department received timely requests from Shanghai Taiside Trading Co., Ltd. ("Taiside") and Wuhan Shino–Food Trade Co., Ltd. ("Shino–Food"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from the PRC, which has a December annual anniversary month and a June semi–annual anniversary month. On August 5, 2005, the Department initiated a review with respect to Taiside and Shino-Food. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 70 FR 45367 (August 5, 2005).

The Department has issued its antidumping duty questionnaire and supplemental questionnaires to Taiside and Shino–Food. The deadline for completion of the preliminary results is currently January 30, 2006.

Extension of Time Limits for Preliminary 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 preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a 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 preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

Pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department determines that this review is extraordinarily complicated and that it is not practicable to complete the new shipper review within the current time limit. Specifically, the Department requires additional time to analyze all questionnaire responses and to conduct verification of the responses submitted to date. In addition, there are complicated issues surrounding the Department's calculation of normal value, particularly with respect to the valuation of raw honey. Accordingly, the Department is extending the time limit for the completion of the preliminary results by 62 days to March 31, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results, in turn, will be due 90 days after the date of issuance of the preliminary results, unless extended.

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

Dated: January 6, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–335 Filed 1–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–840)

Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil

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

EFFECTIVE DATE: January 13, 2006.

SUMMARY: On August 24, 2005, the Department of Commerce published its preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of certain orange juice from Brazil. The period of investigation (POI) is October 1, 2003, through September 30, 2004.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted–average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins." In addition, we have determined that Coinbra Frutesp S.A. (Coinbra–Frutesp) is the successor–in-interest to Frutropic S.A. (Frutropic) and, thus, its production and/or exports of frozen concentrated orange juice for further manufacture (FCOJM) are covered by the scope of this proceeding. Finally, we determine that critical circumstances exist with regard to certain exports of subject merchandise from Brazil.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination:

We determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales of LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice. In addition, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Sucocitrico Cutrale, S.A. (Cutrale), Montecitrus Trading S.A. (Montecitrus), and companies covered by the "All Others" rate. However, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Fischer S/A - Agroindustria (Fischer). Finally, we determine that Coinbra–Frutesp is the successor–in-interest to Frutropic,[1] and thus its production and exports of FCOJM are covered by the scope of this proceeding.

Case History

The preliminary determination in this investigation was published on August 24, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557 (Aug. 24, 2005) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred.

From August through October 2005, we verified the questionnaire responses of the two participating respondents in this case, Cutrale and Fischer.

In November 2005, we received case briefs from the petitioners,[2] Cutrale, Fischer, and an interested party to this investigation, Louis Dreyfus Citrus, Inc. (Louis Dreyfus). We also received

[1] At the time of its revocation from the order, Frutropic no longer existed as a legal entity. Rather, this company had been formally dissolved and incorporated into its parent company, Coinbra. Because this change in corporate organization was limited to a change in name only, we find that all references to Frutropic apply equally to Coinbra.

[2] The petitioners in this investigation are Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens).

rebuttal briefs in November 2005 from the petitioners, Cutrale, Fischer, Louis Dreyfus, and an additional interested party, Citrovita Agro Industrial Ltda. (Citrovita). The Department held a public hearing on November 21, 2005, at the request of the petitioners.

Period of Investigation

The period of investigation is October 1, 2003, through September 30, 2004.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 6, 2006, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of this investigation includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as not–from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra–Frutesp, Cutrale, Fischer, and Montecitrus.

Excluded from the scope of the investigation are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42° Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product. The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of this investigation is dispositive.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Successor–in-Interest

As noted above, at the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. Therefore, the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Two of these entities, Frutropic and Coopercitrus Industrial Frutesp (Frutesp), were purchased by the Louis Dreyfus group in the early 1990s, and they are now producing and exporting FCOJM under the name Coinbra–Frutesp. We analyzed the corporate structure changes on the record of this proceeding and find that Coinbra–Frutesp is the successor–in-interest to Frutropic. *See* the Decision Memorandum at Comment 3. Accordingly, Coinbra–Frutesp's production/exports of FCOJM are subject to the instant investigation. Because we find that Coinbra–Frutesp is the successor–in-interest to Frutropic, a separate finding for Frutesp is unnecessary, and thus we have not analyzed this issue with respect to Frutesp.

Montecitrus

In October 1994, the Department revoked a company named Montecitrus Trading S.A. from the then–existing order on FCOJ from Brazil. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (Oct. 21, 1991). However, in the instant investigation, this company entered a notice of appearance on behalf of the corporate grouping of which Montecitrus is a part (*see* the February 1, 2005, letter from Montecitrus to the Department). For this reason, we sent a questionnaire to the Montecitrus Group, and we received a response to section A of the Department's questionnaire on behalf of this entity. Subsequently, Montecitrus ceased participating in this investigation and it withdrew it business proprietary data from the record of the proceeding.

In both the initiation and the preliminary determination, we inadvertently referenced the producing company within the Montecitrus Group, Montecitrus Industria e Comercio Limitada, rather than Montecitrus Trading, as the entity subject to this proceeding. However, as part of its public section A questionnaire response, Montecitrus informed the Department that it had merged with Montecitrus Industria e Comercio Limitada. *See* page 6 of the May 2, 2005, submission from Miller and Chevalier Chartered to the Secretary of Commerce, "Re–Bracketed Section A Questionnaire Response of Montecitrus Group." Because our scope specifically covers companies excluded and revoked from the order, we find that we should have referenced Montecitrus Trading S.A. as the relevant party to this proceeding in our **Federal Register** notices. We have corrected this error in the final determination. Consequently, we have instructed U.S. Customs and Border Protection (CBP) to require a cash deposit or the posting of a bond equal to the antidumping duty rate listed below for Montecitrus Trading S.A.

Use of AFA for Montecitrus

As noted in the preliminary determination, Montecitrus notified the Department on May 9, 2005, that it no longer intended to participate in the investigation. *See Preliminary Determination*, 70 FR at 49560. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant investigation, by withdrawing its information from the record, the Department found that, pursuant to section 776(a)(2)(A) of the Act, Montecitrus withheld requested information. Further, pursuant to section 776(a)(2)(B) of the Act, the Department determined that Montecitrus failed to provide the information requested by the Department within the established deadlines. Finally, by withdrawing from the investigation and ceasing to participate in the proceeding, the Department found that, pursuant to section 776(a)(2)(C) of the Act, Montecitrus significantly impeded the investigation. Consequently, pursuant to sections 776(a)(2)(A)-(C) of the Act, the Department continues to find that the application of facts otherwise available to Montecitrus is warranted for the final determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000). In the instant investigation, by ceasing to participate in the investigation, Montecitrus decided not to cooperate and thus did not act to the best of its ability to comply with a request for information. Consequently, we find that an adverse inference is warranted in determining an antidumping duty margin for Montecitrus.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1, at 870 (1994) (SAA).

In accordance with our standard practice, as AFA, we are assigning Montecitrus a rate which is the higher of: (1) the highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005). In this case, the final AFA margin is 60.29 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 70 FR at 7236. We find that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, to encourage participation in future segments of this proceeding).

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* 19 CFR 351.308(c) and (d); *see also* the SAA at 870.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, we relied on our analysis from the preliminary determination. See Preliminary Determination, 70 FR at 49560–49561. Based on this analysis, we determined that the petition price and cost information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 60.29 percent, is corroborated within the meaning of section 776(c) of the Act.

Critical Circumstances

In our preliminary determination, we found that critical circumstances existed for all mandatory respondents and companies subject to the "All Others" rate. *See Preliminary Determination*, 70 FR at 49565–49566. We received comments on our critical circumstances determination from Fischer and the petitioners.

Section 735(a)(3) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to

the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (1) the evidence placed on the record by the respondents and the petitioners; (2) information obtained from the USITC dataweb; and (3) the ITC's preliminary determination of injury (*See Certain Orange Juice from Brazil, Investigation No. 731–TA–1089 (Preliminary)*, 70 FR 20595 (Apr. 20, 2005) (*ITC Preliminary Determination*)).

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain orange juice from Brazil, the petitioners' claim that the pre–existing order on FCOJ from Brazil should be considered to be a history of dumping. However, we disagree that order demonstrates a history of dumping of subject merchandise because there is no overlap in the scope of that order and this proceeding. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Brazil pursuant to section 735(a)(3)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales in accordance with section 735(a)(3)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price (EP) sales or 15 percent or more for constructed export price (CEP) transactions sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Both Cutrale and Fischer made only CEP sales during the POI. The final dumping margin calculated for Cutrale exceeded the threshold sufficient to impute knowledge of dumping (*i.e.*, 15 percent for CEP sales), while the final dumping margin calculated for Fischer did not. Therefore, we determine that there is sufficient basis to find that importers should have known that Cutrale was selling the subject merchandise at LTFV pursuant to section 735(a)(3)(A)(ii) of the Act. However, there is an insufficient basis to find that importers should have known that Fischer was selling the subject merchandise at less than its fair value pursuant to section 735(a)(3)(A)(ii) of the Act. Regarding Montecitrus, we find that importers of subject merchandise produced by this company knew or should have known that this company was selling the subject merchandise at LTFV because the final dumping margin for it exceeds the threshold sufficient to impute knowledge of dumping.

In determining whether an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut–To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (Nov. 20, 1997). In the present case, the ITC preliminarily found reasonable indication that an industry in the United States is materially injured by imports of certain orange juice from Brazil. *See ITC Preliminary Determination*. Based on the ITC's preliminary determination of injury, and the final antidumping margins for Cutrale and Montecitrus, the Department finds that there is a reasonable basis to conclude that the importer knew or should have known that there was likely to be injurious dumping of subject merchandise for these companies.

Regarding the companies subject to the "All Others" rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (Mar. 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "All Others" rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "All Others" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "All Others" category for the antidumping investigation of certain orange juice from Brazil.

In determining whether there is a reasonable basis to believe or suspect that importers knew or should have known that companies subject to the "All Others" rate were selling certain orange juice from Brazil at LTFV, we look to the "All Others" dumping margin, which is based on the weighted–average rate of all investigated companies where the margin is not based on adverse facts available. The dumping margin for the "All Others" category in the instant case exceeds the 15 percent threshold necessary to impute knowledge of dumping. Therefore, we find that importers had knowledge that companies covered by the "All Others" rate were dumping subject merchandise in the United States during the POI, and that the importer knowledge criterion, as set forth in section 735(a)(3)(A)(ii) of the Act, has been met for the "All Others" companies. Based on the ITC's preliminary determination of injury, and the final antidumping margin for companies subject to the "All Others" rate, the Department finds that there is a reasonable basis to conclude that the importer knew or should have known that there was likely to be injurious dumping of subject merchandise for these companies.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). Accordingly, in determining whether imports of the subject merchandise have been massive, we have based our analysis for Cutrale and the companies covered by the "All Others" rate on shipment data for comparable six-month periods preceding and following the filing of the petition.

In determining whether imports for Cutrale were massive under 19 CFR 351.206(h), we note that we were unable

to verify Cutrale's company–specific data. Because Cutrale submitted information that could not be verified, the Department finds that, pursuant to section 776(a)(2)(D) of the Act, it is appropriate to use facts available (FA) in reaching our final determination regarding critical circumstances for Cutrale. Further, because Cutrale did not act to the best of its ability to comply with a request for information, we find that an adverse inference in selecting from the facts otherwise available is warranted. As AFA, we have relied on Cutrale's reported monthly shipment data for the base and comparison periods because this data shows Cutrale's imports of the subject merchandise were massive in accordance with section 735(a)(3)(B) of the Act.

Regarding Montecitrus, we find that Montecitrus's withdrawal from the instant investigation precluded the Department from soliciting company–specific import data. Thus, we have based our determination of whether imports for Montecitrus were massive on AFA and find that imports for Montecitrus were massive in accordance with section 735(a)(3)(B) of the Act.

In determining whether imports for the companies subject to the "All Others" rate were massive, we examined USITC dataweb data for a six-month period (*i.e.*, January to June 2005) adjusted to exclude Cutrale's and Fischer's company–specific data for the same period. Because the volume of imports increased by more than 15 percent from January to June 2005 when compared to the import volume in the base period, we find that imports for the companies subject to the "All Others" rate were massive in accordance with section 735(a)(3)(B) of the Act.

In making our critical circumstances determination, we also considered the impact of seasonality on imports of certain orange juice. We noted in our preliminary affirmative determination of critical circumstances that imports of certain orange juice are not subject to seasonal trends. *See* the August 16, 2005, memorandum from Louis Apple to Barbara E. Tillman entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil - Affirmative Preliminary Determination of Critical Circumstances." Because no interested parties have raised issues of seasonality subsequent to our preliminary determination, we have not revisited our analysis with regard to this issue. Consequently, we find that any surge in U.S. imports of certain orange juice cannot be explained by seasonal trends.

Based on the fact that: 1) we find that knowledge of dumping exists with regard to Cutrale, Montecitrus, and the companies subject to the "All Others" rate; and 2) there have been massive imports of certain orange juice which cannot be accounted for by seasonal trends for these parties, we find that critical circumstances exist with regard to imports of certain orange juice from Brazil for Cutrale, Montecitrus, and companies subject to the "All Others" rate. However, because we do not find knowledge of dumping with regard to Fischer, we find that critical circumstances do not exist for this company.

For further discussion, see the Decision Memorandum at Comment 4 and the January 6, 2006, memorandum to Irene Darzenta Tzafolias, Acting Director, Office 2, from the team entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil – Final Determination of Critical Circumstances."

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Cutrale and Fischer for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of entries of certain orange juice from Brazil produced and/or exported by Cutrale, Montecitrus, and companies subject to the "All Others" rate that are entered, or withdrawn from warehouse, for consumption on or after May 26, 2005, 90 days prior to the date of publication of the preliminary determination in the **Federal Register**. However, because we find that critical circumstances do not exist with regard to imports of certain orange juice from Brazil produced and/or exported by Fischer, we will instruct CBP to terminate the retroactive suspension of liquidation for Fischer between May 26, 2005, and August 24, 2005 (the date of publication of the preliminary determination). CBP shall continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We will also instruct CBP that, for NFC, the "All Others" rate applies to all companies not specifically named in the "Final Determination Margins" section, below, including Coinbra–Frutesp. However, for FCOJM, the "All Others" rate only applies to FCOJM produced and/or exported by Cargill. CBP shall not suspend entries of FCOJM from companies other than Cargill, Cutrale, Fischer, and Montecitrus at this time.

Regarding Coinbra–Frutesp, this notice serves as notification to the ITC that Coinbra–Frutesp's production/exports of FCOJM are part of the class or kind of merchandise under investigation. Consequently, we anticipate that the ITC will include these exports in its final injury determination. If the ITC's final determination is affirmative, we will instruct CBP to begin suspending liquidation of any entries of FCOJM produced and/or exported by Coinbra–Frutesp after the date of publication of that determination.

Final Determination Margins

The weighted–average dumping margins are as follows:

Exporter/Manufacturer	Weighted–Average Margin Percentage	Circumstances Critical
Fischer S/A - Agroindustria	9.73	No
Montecitrus Trading S.A.	60.29	Yes
Sucocitrico Cutrale, S.A.	19.19	Yes
All Others	15.42	Yes

In accordance with section 735(c)(5)(A) of the Act, we have based the "All Others" rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding. The "All Others" rate is calculated exclusive of all de minimis margins and margins based entirely on AFA.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

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

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: January 6, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memo

Comments

1. Legal Authority to Initiate This Proceeding
2. Scope "Clarification"
3. Successor–in-Interest Determination for Coinbra–Frutesp S.A. (Coinbra–Frutesp)
4. Critical Circumstances
5. Refunds of U.S. Customs Duties
6. Data Changes Arising from the Sales Verifications
7. Treatment of By–Products
8. Trading Gains and Losses on Cutrale's Futures Contracts
9. Offset to Indirect Selling Expenses for Futures Trading Gains and Losses for Cutrale
10. Constructed Export Price (CEP) Offset for Cutrale
11. International Freight Expenses for Cutrale
12. Fischer's Unreported U.S. Sales to Puerto Rico
13. Packing Services Provided by an Affiliate of Fischer
14. U.S. Duty Reimbursements for Fischer
15. Bunker Fuel Adjustments for Fischer
16. Home Market Credit Expenses for Fischer
17. Indirect Selling Expense Ratio for Fischer
18. AFA for Montecitrus
19. Clerical Errors in the Preliminary Determination for Cutrale
20. Growing Season for Cutrale
21. Data Changes Arising from the Cutrale Cost Verification
22. By–Product Adjustment Associated with Cutrale's Non–Orange Fruit Inputs
23. Non–Product Specific Costs for Fischer
24. General and Administrative (G&A) Expenses for Fischer
25. Brix Level for Fischer's Dairy Pak Orange Juice
26. Harvesting Costs for Fischer
27. Undervalued Orange Cost for Fischer
28. Finished Goods "Purchased" from One of Fischer's Affiliates

[FR Doc. E6–333 Filed 1–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE.

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Joe Freed or Hua Lu, 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) 482–3818 or (202) 482–6478, respectively.

Background

On May 2, 2005, the Department of Commerce ("the Department") published in the **Federal Register** a notice for an opportunity to request an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 22631 (May 2, 2005). As a result of a request for a review filed by Tianjin Magnesium International Co., Ltd. ("TMI") on May 26, 2005, the Department published in the **Federal Register** a notice of initiation of an administrative review for the period May 1, 2004, through April 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (June 30, 2005). The preliminary results of review are currently due no later than January 31, 2006.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondent's sales practices, factors of production, and corporate relationships, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the preliminary results of review by 60 days until April 1, 2006, in accordance with section 751(a)(3)(A) of the Act. Further, because April 1, 2006, falls on a Saturday, the preliminary results will be due on April 3, 2006, the next business day. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: January 9, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–334 Filed 1–12–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–838)

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

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

EFFECTIVE DATE: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Shane Subler or David Neubacher at (202) 482–0189 or (202) 482–5823, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On June 21, 2005, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Products from Canada*, 70 FR 35632, dated June 21, 2005 (*Initiation Notice*). The Department initiated this review to determine the appropriate cash deposit rate for West Fraser Mills Limited (West Fraser), which acquired Weldwood of Canada Limited (Weldwood) on December 31, 2004. We preliminarily determine that the post–acquisition West Fraser is the successor–in-interest to the pre–acquisition West Fraser. Therefore, we preliminarily conclude that the post–acquisition West Fraser should be assigned the same cash deposit rate as West Fraser prior to the acquisition. Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2005, the Coalition for Fair Lumber Imports Executive Committee (the Coalition), a domestic interested party to this proceeding, submitted a request that the Department initiate a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada pursuant to Section 751(b) of the Tariff Act of 1930, as amended (the Act). On June 21, 2005, the Department published the *Initiation Notice* in the **Federal Register**. Also on June 21, 2005, the Department issued West Fraser a questionnaire requesting further details on its acquisition of Weldwood. On July 1, 2005, the Department granted West Fraser an extension until July 19, 2005, to file its response. The Department received West Fraser's response on July 19, 2005. The Coalition submitted comments to the Department on August 1, 2005.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
- *Radius–cut box–spring-frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) if the

importer establishes to U.S. Customs and Border Protections's (CBP's) satisfaction that the lumber is of U.S. origin.

- *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Preliminary Results of the Review

In an antidumping duty changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 5128 (February 12, 1992) (*Canada Brass*). The Department has discretion in determining successorship because there is no explicit legal standard for determining whether one company is a successor to another under the Act or under the Department's regulations. *See Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944–945 (February 14, 1994) (*Industrial Phosphoric Acid*). Although no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Canada Brass, 57 FR 5128; see also Industrial Phosphoric Acid*, 59 FR 6944–945. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979–980 (March 1, 1999).

In its July 19, 2005, questionnaire response,[3] West Fraser stated that it purchased the sole Weldwood share from International Paper Company (IP) on December 31, 2004. The acquisition agreement and related amendments located at Exhibits 3 and 4 of the CCR Response indicate that IP transferred its sole outstanding share in Weldwood to West Fraser on the closing date of December 31, 2004. The certificate of amalgamation located at Exhibit 5 of the CCR Response indicates that West Fraser and Weldwood were amalgamated as one company as of January 1, 2005.

As shown in Exhibit 7 of the *CCR Response*, West Fraser's board of directors did not change as a result of the acquisition. Weldwood had a single–member board that ceased to exist as of January 1, 2005. The board member accepted a position with IP. In addition, as detailed in Exhibit 8 of the *CCR Response*, the acquisition of Weldwood resulted in minimal changes to the composition of West Fraser's top management. Weldwood's vice–president of sales became West Fraser's vice–president for export lumber sales and market development (*i.e.*, sales outside of North America). Two of Weldwood's remaining eight management officers accepted non–officer positions in operations for West Fraser. Weldwood's other five officers did not accept positions with West Fraser. The original 11 management

[1] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[2] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

[3] *See* Letter from West Fraser to the Department, Re: Changed Circumstances Questionnaire - West Fraser's Questionnaire Response, dated July 19, 2005 (*CCR Response*).

officers of West Fraser all continued as officers following the acquisition.

West Fraser's customer base also did not change significantly following the acquisition. At Exhibit 12 of the *CCR Response*, West Fraser provided a list of all of its U.S. and Canadian customers during the first five months of 2005 and the sales volume to these customers. The list also identifies whether these customers were customers of Weldwood or West Fraser prior to the acquisition. The list shows a strong similarity between the customer base of Weldwood and the customer base of West Fraser prior to the acquisition. A high percentage of the post–acquisition West Fraser's sales volume was to customers that were customers of West Fraser prior to the acquisition. Furthermore, West Fraser states that a number of its customers in 2005 that purchased only from Weldwood in 2004 had purchased from West Fraser in prior years.

West Fraser's supplier base also did not change significantly after the acquisition. On page 9 of the *CCR Response*, West Fraser states that all of Weldwood's largest suppliers also supplied West Fraser prior to the acquisition. West Fraser provides examples of these suppliers, including the provinces of Alberta and British Columbia (stumpage), Canadian National railway, and major energy suppliers. West Fraser acknowledges that many local suppliers to Weldwood mills have continued to supply the same mills after the acquisition.

Of the four specific changed circumstances review analysis criteria listed in *Canada Brass*, the criterion that changed most significantly for West Fraser was its production capacity. Prior to the acquisition, West Fraser's production capacity for softwood lumber was 2,530 million board feet (MBF). This figure includes West Fraser's proportionate share of production at four mills that it owned jointly with Weldwood and other parties. Weldwood's production capacity at the time of the acquisition was 1,297 MBF, which also includes Weldwood's proportionate share of production at three jointly–owned mills. As a result of adding Weldwood's capacity, West Fraser increased its production capacity by 48.7 percent immediately following the acquisition. West Fraser adds, however, that it will finish reconstructing and expanding its mill in Quesnel, British Columbia, in 2006. It claims that the 119 MBF expansion was planned before the acquisition of Weldwood and does not relate to the acquisition. Furthermore, West Fraser states that it has an agreement with the Canadian Commissioner of Competition to sell its interest in two mills that it owned jointly with Weldwood. It states that the sale of the mills will decrease its capacity by approximately 343 MBF. Therefore, West Fraser calculates that its net increase in softwood lumber production capacity as a result of the acquisition is 36 percent, which includes the effect of the Quesnel reconstruction and the sale of the jointly–owned mills.

In addition to the four CCR criteria specified in *Canada Brass*, the questionnaire to West Fraser requested details on other aspects of the company's operations. First, the *CCR Response* indicates that West Fraser's product line did not change significantly as a result of the acquisition. In Exhibit 10 of the *CCR Response*, West Fraser listed the total volume of U.S. and Canadian sales by species and grade for Weldwood, for West Fraser prior to the acquisition, and for West Fraser during the first five months following the acquisition. The sales information shows that approximately 2.5 percent of West Fraser's combined U.S. and Canadian sales volume during the first five months of 2005 was of a grade and species combination that West Fraser did not sell in 2004. Although Weldwood sold some products that West Fraser did not sell prior to the acquisition, the sales volumes for these products were much lower than for the products sold by both companies prior to the acquisition. In addition, West Fraser's top 10–selling products in the United States and Canada during the first five months of 2005 were sold by both companies prior to the acquisition. A review of the other top–selling products for Weldwood and for West Fraser prior to the acquisition shows a close similarity.

Furthermore, other information in the *CCR Response* indicates that West Fraser's operations did not change significantly as a result of the acquisition. First, Weldwood no longer exists as a corporate entity. West Fraser does not sell products under the Weldwood brand. Furthermore, West Fraser is expanding its headquarters in Quesnel, British Columbia, and will close Weldwood's Vancouver headquarters upon completion of the expansion. West Fraser explains that its sales personnel now manage all sales activity at Weldwood's former Vancouver office. As a result of the headquarters closure, only one of Weldwood's North American sales employees has accepted a position with West Fraser in Quesnel. The others have either left the company or have announced plans to leave by the end of 2005. Also, West Fraser will continue to use Lumbertrak, its product management software, for all sales operations. Finally, West Fraser has maintained three Weldwood sales personnel in Japan, but it has consolidated all export sales operations (*i.e.*, sales outside of the United States and Canada) at its export sales office in Vancouver, which West Fraser operated prior to the acquisition.

Based on our review of West Fraser's questionnaire response, we preliminarily determine that the post–acquisition West Fraser is the successor–in-interest to the pre–acquisition West Fraser. In its analysis of changes to the respondent's management in *Industrial Phosphoric Acid*, the Department stated, "The changes in (the respondent's) personnel are well within the normal range of personnel changes that one would expect over time within the same operation."[4] We find that the overall changes to West Fraser's operations are well within the range of changes that one would expect over time in the same operation.

The most significant change to West Fraser's operations is the increase in its production capacity. In analyzing whether West Fraser's operations have changed significantly as a result of the acquisition, however, the Department must consider West Fraser's operations as a whole. We find that the capacity increase is outweighed by the absence of significant changes to West Fraser's board of directors, top management, suppliers, customer base, product line, corporate structure, brand identification, sales process, and sales operations. Therefore, we preliminarily determine that the post–acquisition West Fraser should be assigned the same cash deposit rate of West Fraser prior to the acquisition.

If the above preliminary results are affirmed in the Department's final results, the cash deposit rate from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the third

[4] *See Industrial Phosphoric Acid* at 6944.

antidumping duty administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 37 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. In accordance with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than March 10, 2006.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act and section 351.221(c)(3)(i) of the Department's regulations.

Dated: January 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–332 Filed 1–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Citizen-at-Large, Middle Keys; Maritime Heritage; Research & Monitoring Alternate; Marine Life Alternate; Education Alternate and South Florida Ecosystem Restoration Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2 or 3 year terms, pursuant to the Council's Charter.

DATES: Applications are due by March 31, 2006.

ADDRESSES: Application kits may be obtained from Fiona Wilmot, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050, or electronically from *Fiona.Wilmot@noaa.gov*. They may also be downloaded from the Web site *www.fknms.noaa.gov*. Completed applications should be returned to the same address.

FOR FURTHER INFORMATION CONTACT: Fiona Wilmot at the above address or by telephone at (305) 743–2437, extension 27.

SUPPLEMENTARY INFORMATION: The FKNMS Advisory Council was established in 1991, and is the oldest of the 13 councils in the NMSP. It has 20 members covering a wide spectrum of interests in the Florida Keys community, including boating, conservation, diving, education, Everglades restoration, fishing (commercial and recreational), government, maritime heritage, research, tourism and the community-at-large. The Council meets bimonthly and also has a number of working groups focusing on specific issues at any given time. Ad hoc committees are formed to deal with one-time issues. The Council deals with emergent issues, acts as a conduit to the community with the Sanctuary, and advises Federal and State sanctuary managers on a consensus basis.

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 9, 2006.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration.

[FR Doc. 06–338 Filed 1–12–06; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0004]

Proposed Collection; Comment Request

AGENCY: Marine Corps Marathon Office, Marine Corps Base Quantico, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Marine Corps Marathon Office, Marine Corps Base Quantico announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 14, 2006.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Marine Corps Marathon office, Attn: Angela Huff, PO Box 188, Quantico, VA 22134, or call the Marine Corps Marathon office at 703–432–1159. E-mail is *marine.marathon@usmc.mil*.

Title and OMB Number: Marine Corps Marathon Race Applications: OMB Number 0703–TBD.

Needs and Uses: The information collection requirement is necessary to obtain and record the information of runners to conduct the races, for timing purposes and for statistical use.

Affected Public: Individuals or households.

Annual Burden Hours: 1,522.8.
Number of Respondents: 30,456.
Responses Per Response: 1.
Average Burden Per Response: 5 Minutes.
Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are runners who are signing up for the Marine Corps Marathon races held by the Marine Corps Marathon office, Marine Corps Base Quantico. The three races are the Marine Corps Marathon, the Marine Corps Marathon 10k and the Marine Corps Marathon Healthy Kids Fun Run. The Marine Corps Marathon office records the data of all runners to conduct the races in preparation and execution of the races and to record statistical information for sponsors, media and for economic impact studies. Collecting this data of the runners is essential for putting on the races.

Dated: January 9, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–296 Filed 1–12–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, February 8, 2006.

Place of Meeting: Veterans Affairs Conference room, Room 418, Senate Russell Building, Washington, DC 20510.

Start Time of Meeting: Approximately 9 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA. Sub Committee meetings on Academics, Military/Physical and Quality of Life to be held prior to Organizational meeting. All proceedings are open.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–319 Filed 1–12–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Supplemental Environmental Impact Statement for the Boston Harbor Inner Harbor Maintenance Dredging Project

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, New England District, has prepared a Draft Supplemental Environmental Impact Statement and State Notice of Project Change (DSEIS/NPC) to maintenance dredge the following Federal navigation channels: the Main Ship Channel upstream of Spectacle Island to the Inner Confluence, the upper Reserved Channel, the approach to the Navy Dry Dock, and a portion of the Chelsea River (previously permitted) in Boston Harbor, MA. Maintenance dredging of the navigation channels landward of Spectacle Island is needed to remove shoals and restore the Federal navigation channels to their authorized depths. Materials dredged from the Federal channels will either be disposed of at the Massachusetts Bay Disposal Site (if the material is suitable for unconfined open water disposal) or, if the material is not suitable for unconfined open water disposal, in confined aquatic disposal (CAD) cell(s). Major navigation channel improvements (deepening) were made in 1999 through 2001 in the Reserved Channel, the Mystic River, Inner Confluence and the Chelsea River. A final EIS was prepared for this previous navigation improvement project in June of 1995 in which the use of CAD cells in the Mystic River, Inner Confluence, and Chelsea River were investigated. A CAD cell for the proposed maintenance project will be constructed in the Mystic River and in the Main Ship Channel just below the Inner Confluence.

DATES: Submit comments on or before February 27, 2006.

ADDRESSES: If you wish to receive a copy of the DSEIS, Executive Summary, or provide comments on the DSEIS/NPC, please contact Ms. Catherine Rogers, Ecologist, U.S. Army Corps of Engineers, New England District, Evaluation Branch, 696 Virginia Road, Concord, MA 01742.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rogers, (978) 318–8231.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers is authorized by the various Rivers and Harbor Acts and Water Resources Development Acts to conduct maintenance dredging of the Federal navigation channels and anchorage areas in Boston Harbor.

A public meeting to solicit comments has been scheduled for 2 p.m. on Tuesday, February 14, 2006, on the second floor of the Black Falcon Cruise Terminal, One Black Falcon Avenue, Boston, MA.

Dated: December 30, 2005.

Curtis L. Thalken,

Colonel, Corps of Engineers, New England District.

[FR Doc. 06–318 Filed 1–12–06; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Westminster Watershed Study, Orange County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of this study is to evaluate the Westminster watershed ecosystem and look for multipurpose recommendations for how to more effectively manage its natural resources. There is a need for both flood control improvements as well as ecosystem habitat restoration. The study area is located in western Orange County, CA, approximately 25 miles southeast of the City of Los Angeles. The Westminster watershed lies on a flat coastal plain, is approximately 90 square miles in area, and is almost entirely urbanized with residential and commercial development. There are two main channel systems that collect runoff from portions of urbanized areas in the cities of Anaheim, Stanton, Cypress, Orange, Santa Ana, Garden Grove, Westminster, Fountain Valley, Los Alamitos, Seal Beach, and Huntington Beach.

The East Garden Grove-Wintersburg Channel (EGGW), with its principal tributary, the Ocean View Channel (OV), drains into Bolsa Bay. Two retarding basins (Haster and West Street) exist at the upstream reach of the EGGW

channel. Bolsa Bay includes the Bolsa Chica Lowlands and Ecological Reserve, and is a major environmental resource in southern California. The Bay has been designated as an area of national significance, and is host to a wide assemblage of resident and migratory waterfowl and marine species including over 30 Federal and/or State listed sensitive species that utilize the wetlands during all or part of their annual cycle.

The Bolsa Chica Flood Control Channel (BCFC), with its principal tributaries, the Anaheim-Barber City Channel and Westminster Channel, drains to Huntington Harbour. The BCFC Channel drains the western portion of the study area, with a significant portion of property adjacent to the Seal Beach Naval Weapons Station of the U.S. Navy and 1.5 miles runs through and adjacent to the Los Alamitos Armed Forces Training Base. Aside from the military facilities, this portion of the watershed is almost entirely urbanized. Agriculture is still practiced under leases granted by the Navy on portions of their property. The BCFC Channel outlets into Huntington Harbour, but unlike EGGW, does not outlet into Bolsa Bay. The sole ocean outlet for both Bolsa Bay and Huntington Harbour is to the north at Anaheim Bay and the Seal Beach National Wildlife Refuge. Tidal influence in the lowermost portion of the BCFC and East Garden Grove-Wintersburg Channels extended approximately 2 miles inland.

ADDRESSES: Submit comments to Ms. Lydia Lopez-Cruz at U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RN, c/o Lydia-Cruz, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia Lopez-Cruz, Environmental Coordinator, at 213–452–3855 or e-mail at *lydia.lopez-cruz@usace.army.mil*.

SUPPLEMENTARY INFORMATION: *1. Authorization.* The proposed study is authorized in response to a House Resolution dated May 8, 1964, which reads as follows:

"Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the reports on (a) San Gabriel River and Tributaries, published as House Document No. 838, 76th Congress, 3d Session; (b) Santa Ana River and Tributaries, published as House Document No. 135, 81st Congress, 1st Session; and (c) the project authorized by the Flood Control Act of 1936 for the protection of the metropolitan area in Orange County, with a view to determining the advisability of modification of the authorized projects in the interest of flood control and related purposes."

2. *Background.* Before development, the watershed was largely comprised of grasses and trees, such as oaks, cottonwoods and sycamore. Early development was primarily agricultural with some residential. As of the early 1990s, 85 percent of the Westminster watershed was urbanized. Land use consists primarily of residential, commercial, military, light industrial, schools and parks, and transportation facilities. It is expected that in the next 50 years full development of the remaining agricultural and vacant land will occur. This future potential development is not expected to significantly affect the current flood conditions.

3. *Scoping Process.* A scoping meeting is scheduled for January 25, 2006, 6:30–8 p.m., at Garden Grove Civic Center, Community Meeting Center, Constitution Room, 11300 Stanford Ave., Garden Grove, CA 92840. Additional public meetings will be scheduled throughout the study. For specific dates, times and locations please contact Mary Anne Skorpanich, Orange County, at 714–834–5311 or e-mail at *MaryAnne.Skorpanich @rdmd.ocgov.com*. Potential impacts associated with the proposed action will be evaluated. Resource categories that will be analyzed are: physical environment, geology, biological resources, air quality, water quality, recreational usage, aesthetics, cultural resources, transportation, noise, hazardous waste, socioeconomics and safety.

b. Participation of affected Federal, State and local resource agencies, Native American groups and concerned interest groups/individuals is encouraged in the scoping process. Time and location of the Public Scoping meeting will also be announced by means of a letter, public announcements and news releases. Public participation will be especially important in defining the scope of analysis in the EIS/EIR, identifying significant environmental issues and impact analysis in the EIS/EIR and providing useful information such as published and unpublished data, personal knowledge of relevant issues and recommending mitigative measures associated with the proposed action.

c. Those interested in providing information or data relevant to the environmental or social impacts that should be included or considered in the environmental analysis can furnish this information by writing to the points of contact indicated above or by attending the public scoping meeting. A mailing list will also be established so pertinent data may be distributed to interested parties.

Dated: January 5, 2006.

Alex C. Dornstauder,

Colonel, U.S. Army, District Engineer.

[FR Doc. 06–317 Filed 1–12–06; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 13, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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

Dated: January 9, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Guaranty Agency Financial Report.

Frequency: Monthly, Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 612.

Burden Hours: 33,660.

Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the FFEL program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2917. 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 IC *DocketMgr@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 the e-mail address IC *DocketMgr@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. E6–339 Filed 1–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Final Procedures for Distribution of Remaining Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of final procedures for distribution of remaining crude oil overcharge refunds.

SUMMARY: In a May 21, 2004 Notice, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) announced procedures for making one final round of refund payments in this proceeding. However, there is ongoing litigation that could affect the amount of crude oil monies available for distribution, thus making it unworkable at this point to have a single, last round of payments that would exhaust the remaining crude oil refund monies. We instead announce here that we will issue refunds amounting to approximately 90% of the money due each eligible claimant.

ADDRESSES: Inquiries should be addressed to: Crude Oil Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–1615, and submitted electronically to *crudeoilrefunds@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Steven Goering, Staff Attorney, or Richard Cronin, Assistant Director, Office of Hearings and Appeals, Department of Energy; telephone: 202–287–1449, e-mail: *steven.goering@hq.doe.gov*, *richard.cronin@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

OHA published a notice of proposed procedures for the distribution of remaining crude oil overcharge refunds in the **Federal Register** on September 30, 2005 ("the September 30 notice"), and requested comments from interested parties. 70 FR 57274. The September 30 notice explained that events and proliferating litigation affecting the windup of this crude oil refund proceeding have precluded the Department from proceeding with the calculation of the per-gallon "volumetric" refund amount that is necessary to make a single, final payment of refunds to all qualified applicants. Calculating the volumetric amount requires two fixed numbers: (1) The amount of funds available for distribution ("the numerator"), which is divided by (2) the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants ("the denominator"). However, as explained in the September 30 notice, the increasing litigation that has been brought to bear on the proceeding may affect both the numerator and the denominator of the volumetric calculation. As a result, the plan to make a single, final round of refunds to eligible persons is unworkable and cannot be achieved.

We therefore announced a provisional volumetric refund amount and defined that portion of the crude oil monies that would be reserved pending the resolution of the litigation. Specifically, we proposed to make refunds to claimants based upon a volumetric calculated using as a numerator approximately 90% of all available funds, and as a denominator the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants plus the number of gallons claimed in an application denied by OHA that is currently the subject of pending litigation.

We also proposed in the September 30 notice that we not distribute funds to 73 claimants, listed in the notice, whose refunds are currently being challenged by third parties in pending litigation. We proposed that, upon the conclusion of litigation and a final upholding of our refund awards, we would promptly release the funds to the affected claimants.

II. Summary and Response to Comments on Proposed Procedures

In response to the September 30 notice DOE received seven comments submitted by a State government, a member of the public, and law firms and filing services that represent eligible claimants. This section of the **SUPPLEMENTARY INFORMATION** summarizes the issues raised in the comments, and gives DOE's response, as follows:

Comment: Two commenters disagree with our proposal not to disburse at this time funds that are currently the subject of litigation in which a U.S. District Court awarded plaintiffs attorney's fees in the "amount of thirty percent (30%) of the fund derived from the amount of the increase in the per million-gallon distribution over the $670 [per million gallons] initially proposed by DOE." *Consolidated Edison* v. *Abraham*, Civil Action No. 03–1991, *slip op.* at 12 (January 26, 2005). The Department has filed Notices of Appeal regarding this decision, and plaintiffs have filed appeals of the order insofar as it denied the full amount of attorney's fees they sought, which would have amounted to 10% of the entire "Subpart V" crude oil fund, *i.e.*, about $28 million. See DC Cir. Docket Nos. 05–5089, 05–5090, 05–5223, and Fed. Cir. Docket Nos. 05–1309, 05–1310, 05–1450.

Neither commenter disagreed with the withholding of the amount of the attorney's fee already awarded by the District Court, approximately 4% of the

funds to be disbursed. Rather, they object to the withholding of amounts representing the additional attorney's fees sought by plaintiffs on appeal in that case, an additional 6% of the funds at issue. The commenters question the necessity of withholding funds for the possible success of claims that have become "increasingly questionable" and "been repeatedly found to be meritless."

Similarly, one commenter, a State government, took issue with our proposal not to disburse refunds at this time to those claimants, including the commenter, whose refunds are currently being challenged by third parties in pending litigation. The State government notes that it "decided to earmark the supplemental crude refund to supplement the Low Income Energy Assistance Program" and that if it does not receive its refund at this time, it "will be forced to reduce the 2005–2006 available funding for heating assistance benefits."

Response: While we are sympathetic to the expressed concerns that continued litigation is delaying refunds that otherwise could be paid, we nevertheless cannot disburse funds now based on the assumption of a favorable outcome in these cases, given the enormous complications that would result should that assumption turn out to be wrong. Instead, fiscal prudence requires that we reserve sufficient funds to pay the appropriate parties whatever the outcome of this and other pending cases. In the meantime, these funds are being held in an interest-bearing account, the effect of which will be to compensate claimants for the delay in disbursement.

Comment: One commenter, the attorney for the private parties in all of the pending litigation at issue, suggests that, before making any disbursement, we calculate a volumetric that represents "the full amount per gallon available if DOE is successful in all pending litigation, * * *." The commenter then suggests that nearly 99.5% of this volumetric, "prior to the 10% reduction" for the pending attorney's fee claim, should be paid to clients of the commenter "as to whom he has waived any common fund fee." Another commenter contends that "[s]uch a differentiated payment cannot be justified, either legally or equitably," arguing that the commenter proposing this scheme "has no authority to decide which claimants pay and which do not for the alleged benefit conferred on the *entire* group of claimants."

Response: We agree with the commenter quoted above that there is simply no basis for paying a higher refund amount to the clients of the attorney for the private parties in the pending litigation. As a matter of basic fairness, we intend to pay all claimants at the same volumetric rate. Moreover, the January 26, 2005 order of the U.S. District Court, currently being appealed, states that a certain amount of the funds at issue (representing 30% of the volumetric amount exceeding $0.00067/gallon) be paid out as *attorney's fees*, thus reducing the volumetric refund amount paid to *all* claimants, without exception. We are reserving funds, in part, so that we can comply with this order should it ultimately be upheld. In that event, the funds will be paid to the attorney as attorney's fees, *i.e.*, we will not pay a portion of any attorney fee award directly to his clients.

Comment: One commenter also proposes that "the volumetric should be rounded down to the seventh decimal place, rather than the fifth as proposed, in order to better accomplish the goal of distribution of all available funds to the extent practicable."

Response: Because there is theoretically no limit to the number of decimal places we could use in the volumetric, whatever number of decimal places we choose can always be faulted for not being great enough. In this sense, there is no "correct" choice. On the other hand, there is no compelling reason why we should not round to a greater number of decimal places. In fact, in prior announcements regarding this proceeding, we have already proposed adding a decimal place to the four used in all prior refund distributions. We therefore calculate the volumetric refund amount below by rounding to the ninth decimal.

Comment: The commenter who represents the private parties in the pending litigation also suggests that six additional claimants "be added to the list of those from whom distribution is to be withheld pending conclusion of the litigation."

Response: In his court filings, the commenter has repeatedly stated that his clients are challenging the refunds of "fewer than 75 claimants." Our September 30 notice listed 73 claimants whose refunds we identified as potentially being challenged. The commenter, who is the one challenging these refunds on behalf of his clients and who has ready access to the entire list of eligible claimants, is clearly in the best position to identify the particular claims that he is challenging.

In this connection, the commenter identifies six claimants that we did not list in our September 30 notice. These six claimants will be added to the list of those to whom we will not disburse refunds until the litigation challenging their claims is resolved.

Comment: Several commenters addressed the procedures for the distribution of whatever funds remain after the resolution of pending litigation. One comment proposes that the remaining funds be paid without "any further action or submissions by claimants." Another commenter asks OHA to consider further interim distributions upon the resolution of each of the pending court cases, and seeks confirmation that the remaining funds would be paid "only to those individual verified claimants of record as of December 31, 2004." Finally, one commenter states that OHA should commit "to distribute to claimants any remaining funds after the conclusion of litigation."

Response: If the DOE prevails in all of the pending litigation at issue, there would likely be sufficient remaining funds to warrant a final distribution. However, with six pending lawsuits, there are literally dozens of hypothetical possible combinations of outcomes, each resulting in a potentially different amount of funds available for distribution. In view of the uncertainties posed by the outstanding litigation, we are not in a position to commit ourselves to any course of action until all pending litigation is resolved.

Similarly, the administrative expense of each distribution of funds also makes impractical further interim distributions to all eligible claimants as each pending case is resolved. However, we plan to make prompt initial distributions to those individual claimants whose refunds we are withholding in their entirety at this time, as soon as each case in which the refunds are being challenged is resolved.

We also can confirm that all further distributions will be made only to those eligible claimants who filed verification information with our office by the December 31, 2004 deadline, and that we will require no additional submission or verification from those claimants beyond that which is required to determine eligibility for the initial distribution. We remind each claimant of its continuing obligation to promptly inform us of any changes to its payment address or bank account deposit information, as required in the Decisions and Orders by which each claimant was originally granted a refund in this proceeding.

Comment: One commenter suggests that "every claim about which no further questions remain unresolved should be paid as soon as possible. * * * [W]here the funds can be transferred electronically, the OHA can

and should make all the disbursements immediately. Then, as OHA works through the cases in which questions remain, we encourage administrative choices premised on completing the maximum number of disbursements, rather than distributing the maximum number of dollars. The rough justice required in equitable proceedings favors an administrative course that assures that the maximum number of participants receive as much of their final refund as possible before they lose touch with the proceeding."

Response: We agree with the commenter, and share his desire that refunds be paid as soon as possible. Over the past months, we have worked to resolve pending issues that would delay refunds in particular cases, such as gathering necessary documentation in order to demonstrate that a successor-in-interest to a prior refund recipient should now receive the refund. In doing so, our goal has always been and will continue to be to resolve as many claims as possible, as soon as possible, irrespective of the size of the claims.

III. Final Refund Procedures

Based on our discussion of the comments above, OHA will adopt the following final refund procedures. First, we will use the method set forth in our September 30 notice for calculating the volumetric refund amount, as follows: We will use as the numerator, $254,738,494.09, *i.e.*, approximately 90% (or $255,714,292.20) of all funds available as of December 28, 2005 ($284,126,991.33) [1] minus the amount of an initial refund claimed in one application that was denied by OHA but is currently the subject of pending litigation ($975,798).[2] As the denominator, we will use 366,324,981,322 gallons, *i.e.*, the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants (365,715,107,505 gallons) plus the number of gallons claimed in the application denied by OHA that is currently the subject of pending litigation (609,873,817 gallons). This produces a volumetric refund of $0.000695389 and distributes approximately 90% of the money due to over 99.75% of all eligible claimants.[3]

Also as proposed in our September 30 notice, we will not distribute refunds at this time to certain claimants whose refunds are currently being challenged by third parties in pending litigation. Below is a list of these claimants:

RF272–00011 DEFENSE LOGISTICS AGENCY;
RF272–00350 WISCONSIN DEPT. TRANSPORTATION;
RF272–00512 STATE OF WEST VIRGINIA;
RF272–04416 STATE OF CONNECTICUT;
RF272–08074 STATE OF CONNECTICUT;
RF272–09853 WASHINGTON STATE PATROL;
RF272–11717 WASHINGTON STATE DEPT. TRANS.;
RF272–12181 NEBRASKA PUBLIC POWER DIST.;
RF272–12588 STATE OF CONNECTICUT;
RF272–17487 KENTUCKY DEPT. OF EDUCATION;
RF272–18164 STATE OF NORTH DAKOTA;
RF272–18963 STATE OF NEW MEXICO;
RF272–19364 STATE OF MISSOURI;
RF272–19386 STATE OF VERMONT;
RF272–19457 STATE OF SOUTH DAKOTA;
RF272–20947 LUBRIZOL CORPORATION;
RF272–23229 DISTRICT OF COLUMBIA;
RF272–23790 HERCULES, INC.;
RF272–25793 OHIO DEPT. OF TRANSPORTATION;
RF272–28260 WASHINGTON STATE FERRIES;
RF272–35431 MARYLAND STATE AVIATION ADMIN.;
RF272–44094 OHIO STATE HWY. PATROL;
RF272–44344 STATE OF SOUTH CAROLINA;
RF272–45477 ILLINOIS STATE TOLL HWY. AUTH.;
RF272–49283 COMMONWEALTH OF KENTUCKY;
RF272–49892 NEBRASKA ENERGY OFFICE;
RF272–49898 STATE OF KANSAS;
RF272–50638 WASHINGTON STATE DEPT. OF TRANS.;
RF272–51829 WASHINGTON STATE PARKS & REC.;
RF272–54955 U.S. POSTAL SERVICE;
RF272–56597 STATE OF OKLAHOMA;
RF272–59085 STATE OF UTAH, ENERGY OFFICE;
RF272–59907 STATE OF COLORADO;
RF272–60251 STATE OF WISCONSIN;
RF272–61569 STATE OF MINNESOTA;
RF272–61591 ARKANSAS HWY. & TRANS. DEPT.;
RF272–62009 STATE OF NEW HAMPSHIRE;
RF272–62522 STATE OF NEW YORK;
RF272–63433 STATE OF DELAWARE;
RF272–63623 MARYLAND STATE HWY. ADMIN.;
RF272–63624 MARYLAND DEPT. GENERAL SERVICE;
RF272–64195 STATE ARIZONA DEPT. OF TRANS.;
RF272–64288 STATE OF ARKANSAS;
RF272–64986 STATE OF FLORIDA;
RF272–65199 STATE OF IOWA;
RF272–65200 IOWA DEPT. OF TRANSPORTATION;
RF272–65398 STATE OF NEVADA;
RF272–65470 STATE OF MICHIGAN;
RF272–65524 ILLINOIS DEPT. OF COMMERCE;
RF272–65526 ALASKA DEPT. OF TRANS. & PUB. FAC.;
RF272–66878 NEW YORK TRANSIT AUTHORITY;
RF272–67007 COMMONWEALTH OF PENNSYLVANIA;
RF272–67187 STATE OF INDIANA;
RF272–67248 STATE OF CALIFORNIA;
RF272–67313 STATE OF TEXAS;
RF272–67507 STATE OF VERMONT DEPT. OF COR.;
RF272–67509 STATE OF VERMONT—TRANSPORTATION;
RF272–67563 OREGON DEPT. OF GEN. SERVICES;
RF272–67586 STATE OF ALABAMA;
RF272–68243 NEW JERSEY TRANSIT CORP.;
RF272–68934 NEW YORK STATE THRUWAY AUTH.;
RF272–69744 STATE OF NEW JERSEY;
RF272–69948 WEST VIRGINIA HWY. DEPT.;
RF272–71331 STATE OF TENNESSEE;
RF272–72465 COMMONWEALTH OF MASSACHUSETTS;
RF272–74169 STATE OF MAINE;
RF272–75269 VIRGINIA DEPT. OF STATE POLICE;
RF272–75775 R.I. DEPT. OF ADMINISTRATION;
RF272–76126 U.S. DEPT. OF AGRICULTURE;
RF272–87985 STATE OF MARYLAND;

[1] One commenter suggests that the "volumetric should be calculated, reflecting all interest earned through a date not more than 15 days prior to distribution." The volumetric refund amount announced here reflects the most disbursement of refunds as soon as possible after publication of this notice.

[2] As noted by one commenter, were the claimant whose application was denied by OHA to prevail in litigation, that claimant wuold not only be entitled to the supplemental refund calculated using the volumetric announced here, but also in the initial refund that has already been paid to other successful claimants, *i.e.* $0.0016/gallon of approved petroleum product purchases.

[3] We round down the volumetric refund amount to the ninth decimal place. As explained in the September 30 notice, rounding down ensures that there will be sufficient funds to pay refunds at a given volumetric refund amount.

RF272–97101 CHESEBROUGH–POND'S USA CO.;
RF272–98890 COMMONWEALTH OF VIRGINIA;
RG272–00507 STATE OF OHIO;
RK272–00147 STATE OF MONTANA;
RK272–00362 STATE OF KANSAS;
RK272–03404 WYOMING DEPT. OF TRANSPORTATION.;
RK272–03418 STATE OF GEORGIA—ENERGY RES.;
RK272–04041 STATE OF NORTH CAROLINA;
RR272–00207 STATE OF TENNESSEE.

We note that six of the claimants listed above were not listed in our September 30 notice. Thus, while the general public, including these six claimants, has been given notice and an opportunity to comment on our proposal to withhold payment on claims currently being challenged in court, these six claimants were not put on notice that this decision would directly and adversely impact them. Thus, each of these claimants should be given an opportunity to show that, in fact, its claim should not be included in the list—*i.e.*, is not among those currently being challenged in pending litigation. If such a showing is made by any of the six claimants within 30 days of the date of this notice, we will not delay the distribution of a refund to that claimant. In any event, upon the conclusion of any of the litigation challenging particular refund claims, if our refund award is upheld we will promptly order the disbursement of refunds to the affected claimant(s).

It is imperative that all refund recipients immediately inform OHA in the event of any change of payment address or bank account deposit information. DOE will not attempt to locate payees of returned refund payments, and the associated funds will be divided equally between the States and the Federal Government.

Issued in Washington, DC, on January 6, 2005.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. E6–373 Filed 1–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–006]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Liebherr Hausgeräte From the DOE Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and solicitation of comments.

SUMMARY: Today's notice publishes a petition for waiver for Liebherr Hausgeräte (Liebherr). The Liebherr petition requests a waiver to modify the refrigerator test procedure for the Liebherr line of combination wine storage-freezer products. The Department of Energy (DOE or Department) is soliciting comments, data, and information respecting the petition for waiver.

DATES: The Department will accept comments, data, and information not later than February 13, 2006.

ADDRESSES: DOE will accept comments on this petition, identified by case number RF–006, and submitted by any of the following methods:

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC, 20585–0121.
- *Telephone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket: For access to the docket to read copies of public comments received, this notice, and the petition for waiver, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; e-mail: *Michael.Raymond@ee.doe.gov*; or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov*, or *Thomas.DePriest@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the "Energy Conservation Program For Consumer Products Other Than Automobiles" which requires, among other things, that DOE prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The relevant DOE test procedure for purposes of today's decision and order is "Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-freezers" (current test procedure). The current test procedure is set forth in 10 CFR part 430, subpart B, Appendix A1. It prescribes a method for characterizing the energy requirements of all types of refrigerators and refrigerator-freezers and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to waive temporarily the test procedure for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(l)) Waivers generally remain in effect until final test procedure amendments become effective, thereby

resolving the problem that is the subject of the waiver. (10 CFR 430.27(m))

On July 5, 2005, Liebherr filed a petition for waiver regarding the DOE refrigerator and refrigerator-freezer test procedures. Liebherr's petition seeks a waiver from the DOE test procedure because, Liebherr asserts, its line of combination wine storage-freezers are not accurately categorized by any of the current DOE classes. Liebherr has submitted a modified test procedure to be used for rating its combination wine storage-freezers. Liebherr proposes to calculate the energy consumption of these products by using the current test procedure outlined in 10 CFR Part 430, Subpart B, Appendix A1 for refrigerator/freezers with the following exception. The current methodology outlined in Appendix A1 states that the unit's energy consumption is to be based on either the freezer compartment temperature or the refrigerator compartment temperature. However, the units produced by Liebherr do not include a refrigerator compartment, but do include a section solely dedicated for the purpose of wine storage, which is not convertible so that it may be used for any other purpose; therefore, Liebherr asserts, it is inappropriate to measure the energy consumption of these units in accordance with the refrigerator-freezer test procedure. Liebherr proposes to combine portions of the refrigerator-freezer test procedure with portions of the AHAM household wine chiller energy test procedure.

The Department is publishing Liebherr's petition for waiver in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information with respect to the petition. Any person submitting written comments must also send a copy of such comments to the petitioner. 10 CFR 430.27(b)(1)(iv).

Issued in Washington, DC, on January 6, 2006.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

July 5th, 2005

Mr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW., Washington DC 20585–0121.

Petition by Liebherr Hausgeräte for a Waiver. Energy Conservation Standards in 10 CFR Part 430, for the Liebherr Wine/freezer Models "WF 1051" and "WFI 1051"

1. Description of Applicant

Liebherr Hausgeräte is part of the Liebherr Group, an international group with a workforce of over 21,000 employees and more than 80 companies worldwide, including the United States of America. Further information can be found at *http://www.liebherr.com.*

Liebherr Hausgeräte has specialized in the manufacture of high quality refrigerators, freezers and wine storage appliances. It is headquartered in Ochsenhausen, Germany. The marketing of Liebherr products in the U.S. started in the 2nd quarter of 2004. Right now, Liebherr Hausgerte is only manufacturing under the Liebherr brand name for products sold in the United States.

2. Background and General Information

Liebherr is requesting relief for a product which consists of a combination of a wine storage compartment on top and freezer compartment on the bottom, Liebherr models WF 1051 and WFI 1051.

Liebherr understands that DOE is not willing to prevent manufacturers of coming to the market with new innovative products which will enhance consumers well being and satisfaction. The market for wine storage has been growing substantially over the last years and is expected to continue growing in the future.

Currently, there is not a current DOE standards for a wine/freezer combination, thus the current evaluation standards would not measure the energy consumption in a representative manner.

3. Petition for a Waiver

On behalf of Liebherr-Hausgeräte GmbH, P.O. Box 1161, 88411 Ochsenhausen, Germany, I wish to submit a petition for a waiver with respect to the Department of Energy, energy efficiency standards under 10 CFR 430.27.

The appliances WF 1051 and WFI 1051 are a combination of a wine storage compartment and a freezer compartment in the bottom. The wine compartment can reach 45° F, which is the ideal drinking temperature for some white wines. But the unit goes as high as 64° F so that we can bring red wines to ideal drinking temperature as well. The wine connoisseurs recommend an average of 55–57° F for long term storage of any kind of wine.

Both models feature wooden wine racks which are not suitable for the storage of fresh food. We also do not offer any optional glass shelves or plastic racks to replace them. So the wine compartment could not be used as a regular refrigerator.

The models WF 1051 and WFI 1051 do not fit into the current standards. To evaluate the models in a representative manner of its true energy consumption characteristics the standard temperature of single wine coolers (55° F) for the wine storage compartment and the standard temperature (5° F) for the freezer compartment should be used. Therefore, the energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

—Energy consumption of the wine compartment:

$E_{Wine} = ET1 + [(ET2–ET1) \times (55° F–TW1) / (TW2–TW1)]$

—Energy consumption of the freezer:

$E_{Freezer} = ET1 + [(ET2–ET1) \times (5° F–TF1) / (TF2–TF1)]$.

The total adjusted volume of the models WF 1051 and WFI 1051 is 11.14 ft^3. Using the standard temperature of 55° F for the wine compartment the annual energy use of the models WF 1051 and WFI 1051 is 475 kWh/a. According to current DOE standards, these models are classified as refrigerator-freezer with automatic defrost with bottom-mounted freezer without through-the-door ice service.

Respectfully submitted,

Marc Perez, Liebherr-Canada Ltd., 1015 Sutton Drive, Burlington ON L7L 5Z8, Canada.

[FR Doc. E6–374 Filed 1–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–24–000]

City of Anaheim, CA; Notice of Filing

January 6, 2006.

Take notice that on December 29, 2005, the City of Anaheim, California (Anaheim) submitted its third annual revision of its Transmission Revenue Balancing Account Adjustment filed on December 7, 2005. Anaheim stated the corrections are reflected in Exhibit ANA–1 and Exhibit ANA–2 as well as in the revised Appendix I.

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 January 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–279 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–701–001]

ANR Pipeline Company; Notice of Compliance Filing

January 6, 2006.

Take notice that on December 22, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on December 16, 2005:

Substitute Nineteenth Revised Sheet No. 2
Substitute Original Sheet No. 19A
Substitute Second Revised Sheet No. 24
Substitute Second Revised Sheet No. 28
Substitute Third Revised Sheet No. 34
Substitute Third Revised Sheet No. 41
Substitute Fourth Revised Sheet No. 42D
Substitute Fourth Revised Sheet No. 44
Substitute Third Revised Sheet No. 45J
Substitute Third Revised Sheet No. 57
Substitute Fourth Revised Sheet No. 64
Substitute Fifth Revised Sheet No. 68
Substitute Second Revised Sheet No. 68D.01
Substitute Eighth Revised Sheet No. 92
Substitute Fifth Revised Sheet No. 195
Substitute Third Revised Sheet No. 196
Substitute Original Sheet No. 196.01

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–293 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ06–2–000]

Department of Energy; Bonneville Power Administration; Notice of Filing

January 6, 2006.

Take notice that on January 4, 2006, the Bonneville Power Administration (Bonneville) filed a Petition for a Declaratory Order Maintaining Reciprocity Approval of Its Open Access Transmission Tariff (OATT) and an Exemption in Lieu of a Filing Fee with the Commission. Bonneville has revised its OATT to include the Interconnection Requirements and Procedures for a Wind Generating Plan set forth in Orders Nos. 661 and 661–A.

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 January 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–284 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–166–000]

Columbia Gas Transmission Corporation; Notice of Penalty Revenue Report

January 5, 2006.

Take notice that on December 30, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing a penalty revenue crediting report pursuant to section 19.6 of the general terms and conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest

on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–259 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–065]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 6, 2006.

Take notice that on December 30, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of February 1, 2006:

Seventy-seventh Revised Sheet No. 25
Seventy-seventh Revised Sheet No. 26
Twenty-first Revised Sheet No. 29
Thirty-fourth Revised Sheet No. 30A

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–297 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–165–000]

Columbia Gulf Transmission Company; Notice of Penalty Revenue Report

January 5, 2006.

Take notice that on December 30, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a penalty revenue crediting report pursuant to section 19.6 of the general terms and conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–273 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–164–000]

Crossroads Pipeline Company; Notice of Penalty Revenue Report

January 5, 2006.

Take notice that on December 30, 2005, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, its Penalty Revenue Crediting Report.

Crossroads states that the filing is being made to report to the Commission any Penalty Revenues Crossroads has received during the contract year, any Crossroads costs netted against the Penalty Revenues, and the resulting Penalty Revenue Credits due to Non-Penalized Shippers for each month of the contract year.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–272 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–146–000]

Dominion South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 16, 2005, Dominion South Pipeline, LP (Dominion South) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective January 16, 2006:

First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 151

Dominion South states that the purpose of this filing is to add tariff language that will allow recovery of costs from its customers relating to certain operational balancing agreements between Dominion South and its interconnecting pipelines.

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, N.E., Washington, D.C. 20426.

This filing is accessible online 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. E6–263 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–168–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 6, 2006.

Take notice that on December 30, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective January 30, 2006:

First Revised Sheet No. 154
Third Revised Sheet No. 158
Fourth Revised Sheet No. 210
First Revised Sheet No. 1062
First Revised Sheet No. 1095
Third Revised Sheet No. 2000
Third Revised Sheet No. 2002

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. E6–295 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–44–000]

Duke Energy Field Services, LP; Notice of Application

January 5, 2006.

Take notice that on December 30, 2005, Duke Energy Field Services, LP (Duke Field Services) submitted an Application for a Limited Jurisdiction, Limited-Term Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act. This filing is available for review at the Commission 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 filed to access the document. Questions about this application should be directed to Katie Rice, Director, Regulatory Affairs, Duke Energy Field Services, LP, 370 17th Street, Suite 2500, Denver, CO 80202, Phone: (303) 605–2166.

Duke Field Services states that the proposed limited jurisdiction, limited term certificate would permit Duke Field Services to transport certain of its raw gas supplies from Northern Natural Gas Company's (Northern Natural) Beaver Wet System in Beaver County, Oklahoma, to the National Helium Plant in Seward County, Kansas, but that Duke Field Services' related gas gathering facilities and operations in Oklahoma and Kansas will not become subject to the Commission's jurisdiction. The pipeline facilities of Panhandle Eastern Pipeline Company and Northern Natural would also be used in this transaction. Duke Field Services says that there would be no jurisdictional rate impact of its proposal because it will be providing service for itself and thus no rate authorization is requested nor required, according to Duke Field Services.

Duke Field Services is seeking this limited jurisdiction, limited term certificate for a term of the earlier of one year, or 60 days after the Commission issues a final order in two pending dockets involving Northern Natural and Duke Field Services, Docket Nos. CP06–39–000 and CP06–40–000, respectively. Those two dockets involve the sale of Northern Natural's Beaver Wet System from Northern Natural to Duke Field Services. Public notices of those two dockets were previously issued on December 22, 2005.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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 eFiling link. The Commission strongly encourages electronic filings.

Comment Date: January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–274 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–162–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 29, 2005, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective December 31, 2005:

Second Revised Sixth Revised Sheet No. 2
First Revised Sheet No. 3
Sheet Nos. 4–9

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. E6–270 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–006]

El Paso Natural Gas Company; Notice of Motion To Place Tariff Sheets in Effect

January 6, 2006.

Take notice that on December 29, 2005, El Paso Natural Gas Company (EPNG) submitted a Motion to Place filing, proposing to effectuate specific provisions of EPNG's Rate Case in the

above-mentioned docket. EPNG tenders for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, become effective January 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–291 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–7–000]

ETC Katy Pipeline, Ltd.; Notice of Petition for Rate Approval

January 6, 2006.

Take notice that on December 8, 2005, ETC Katy Pipeline, Ltd. (ETC) filed, pursuant to section 284.123(b)(1)(i)(A) of the Commission's regulations, an election to use rates contained in its effective State of Texas transportation rate schedule for comparable services under subpart C of part 284 of the Commission's regulations. ETC states that this rate will be applicable to the firm and interruptible transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–300 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–9–000 and ER06–9–001]

FPL Energy Burleigh County Wind, LLC; Notice of Issuance of Order

January 5, 2006.

FPL Energy Burleigh County Wind, LLC (FPLE Burleigh County) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. FPLE Burleigh County also requested waiver of various Commission regulations. In particular, FPLE Burleigh County requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FPLE Burleigh County.

On January 4, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by FPLE Burleigh County should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is February 3, 2006.

Absent a request to be heard in opposition by the deadline above, FPLE Burleigh County is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPLE Burleigh County, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of FPLE Burleigh County's

issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–282 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–158–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 29, 2005, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its Sixth Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, to become effective February 1, 2006:

First Revised Sheet No. 719.
Second Revised Sheet No. 720.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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 online 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. E6–265 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–160–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 29, 2005, Kern River Gas Transmission Company (Kern River) 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, to be effective February 1, 2006.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory 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 online 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. E6–267 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–163–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Reconciliation Filing

January 5, 2006.

Take notice that on December 30, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its annual reconciliation filing pursuant to section 35 of its general terms and conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT has served copies of this filing upon all jurisdictional customers, interested state commissions, and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date : 5 p.m. Eastern Time on January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–271 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–023]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

January 6, 2006.

Take notice that on December 30, 2005 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 2006:

Fourteenth Revised Sheet No. 4G
Third Revised Sheet No. 4G.01
Fifth Revised Sheet No. 4H
Fourth Revised Sheet No. 4I
Third Revised Sheet No. 4L

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–289 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–007]

Millennium Pipeline Company, LP; Notice of Petition To Amend

January 5, 2006.

Take notice that on December 20, 2005, Millennium Pipeline Company, LP, (Millennium), One Blue Hill Plaza, 7th Floor, P.O. Box 1565, Pearl River, New York 10965, filed in Docket No. CP98–150–007, an amendment to its pending application filed on August 1, 2005, in Docket No. CP98–150–006, pursuant to section 7 of the Natural Gas Act (NGA), to reflect a change to the proposed compression facilities to be installed at the site of the existing Columbia Gas Transmission Corporation Corning compressor station in Steuben County, New York. Specifically, Millennium seeks authorization to install a single 15,002 bhp Solar Mars 100-Combustine Turbine instead of the three Caterpillar Model 3616 gas reciprocating 4,735 bhp engines.

This amendment is on file with the Commission and open to 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.

Any initial questions regarding this petition should be directed to counsel for Millennium, Daniel F. Collins or Glenn S. Benson, Fulbright & Jaworski, LLP, at 801 Pennsylvania Avenue, NW., Washington, DC 20004; or (202) 662–4586 (Daniel) or (202) 662–4589 (Glenn), or by fax at (202) 662–4643.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, 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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an

original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link.

Comment Date: January 26, 2006.

Magalie Salas,

Secretary.

[FR Doc. E6–260 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–169–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 6, 2006.

Take notice that on December 30, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighty Fifth Revised Sheet No. 9, to become effective January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–296 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–159–000]

Northern Natural Gas Company; Notice of Filing of Alternative Non-Telemetered Load Forecast Formula

January 5, 2006.

Take notice that on December 29, 2005, Northern Natural Gas Company (Northern) tendered for filing an alternative load forecast formula for Aquila, Inc. in accordance with section 28 of the general terms and conditions of its tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–266 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–161–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 29, 2005, that Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 154, to become effective February 1, 2006.

Northern states that copies of the filing have been mailed to each of 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 online 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. E6–269 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–163–004]

Paiute Pipeline Company; Notice of Compliance Filing

January 6, 2005.

Take notice that on December 22, 2005, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

2nd Sub Thirteenth Revised Sheet No. 10
Sub Fourteenth Revised Sheet No. 10
Sub Fifteenth Revised Sheet No. 10
Substitute Second Revised Sheet No. 32
Substitute Original Sheet No. 37
First Revised Sheet No. 63A.1
Second Revised Sheet No. 63B
Original Sheet No. 63B.1
Twelfth Revised Sheet No. 161

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document upon all parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "efiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–290 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–671–004]

Portland Natural Gas Transmission System; Notice of Compliance Filing

January 6, 2006.

Take notice that on December 28, 2005, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 380, to become effective on September 1, 2005.

PNGTS states that copies of this filing are being served on all jurisdictional customers, interested state commissions, and persons on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–292 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ06–1–000]

Southwest Transmission Cooperative, Inc.; Notice of Filing

January 6, 2006.

Take notice that on December 22, 2005, Southwest Transmission Cooperative, Inc. (SWTC) tendered for

filing revision to its Open Access transmission Tariff in order to update its rates.

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 January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–283 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–157–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2006.

Take notice that on December 29, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 95B and Third Revised Sheet No. 96, to become effective February 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 online 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. E6–264 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–154]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

January 6, 2006.

Take notice that on December 30, 2005, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval an amendment to an existing negotiated rate agreement between Tennessee and Nicor Gas. Tennessee requests that the Commission accept and approve the subject amendment to be effective January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. E6–298 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–167–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

January 6, 2006.

Take notice that on December 30, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets, as listed on Appendix B to the filing, to become effective February 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. E6–294 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–065]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 6, 2006

Take notice that on December 30, 2005, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance Tenth Revised Sheet No. 21, Seventh Revised Sheet No. 22A and Third Revised Sheet No. 22B to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 2006.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–299 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–40–000]

Badger Power Marketing Authority, Inc. and Great Lakes Utilities, Complainant, v. Wisconsin Public Service Corporation, Respondent; Notice of Complaint

January 6, 2006.

Take notice that on December 30, 2005, Badger Power Marketing Authority (Badger) and Great Lakes Utilities (GLU) filed a Complaint against Wisconsin Public Service Corporation (WPSC) alleging that WPSC has treated its affiliate Upper Peninsula Power Corporation preferentially by granting it contract termination rights and a rate reduction, while not providing Badger similar relief.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–280 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–43–000]

Northern Virginia Electric Cooperative, Inc., Complainant v. Old Dominion Electric Cooperative, Inc., Respondent; Notice of Complaint

January 6, 2006.

Take notice that on January 5, 2006, Northern Virginia Electric Cooperative (NOVEC) filed a Complaint against Old Dominion Electric Cooperative (Old Dominion) pursuant to section 206 of the Federal Power Act. NOVEC states that it seeks a determination that certain of the terms of the 1992 Amended and Restated Wholesale Power Agreement between NOVEC and Old Dominion are no longer just and reasonable and should be modified for the remaining term of the agreement; a determination that NOVEC's share of Old Dominion's "existing resources" shall be calculated effective as of a date no later than the date of the Complaint based on the ratio of NOVEC's load to Old Dominion's load; and reformation to permit NOVEC to obtain power supply for amounts in excess of NOVEC's share of its "existing resources" from suppliers and/or resources other than Old Dominion.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 February 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–281 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

January 6, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–644–004.

Applicants: PSEG Energy Resources & Trade LLC.

Description: PSEG Energy Resources & Trade LLC and PSEG Fossil LLC submit First Substitute Original Sheet No. 1 to FERC Electric Tariff, Original Volume No. 2 to comply with Order 614.

Filed Date: December 28, 2005.

Accession Number: 20051230–0106.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–404–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Co and UNS Electric, Inc. submit Original Sheet No. 474 *et al.* to FERC Electric Tariff, Third Revised Volume No. 2.

Filed Date: December 28, 2005.

Accession Number: 20051229–0135.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–405–000.

Applicants: Mirant Power Purchase, LLC.

Description: Mirant Power Purchase, LLC an indirect wholly-owned subsidary of Mirant Corp notifies that, as a result of a name change, that it has succeeded to the market-based rate schedule of Mirant Oregon, LLC.

Filed Date: December 28, 2005.

Accession Number: 20051229–0175.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–406–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to its Open Access Transmission Tariff and the Amended and Restated Operating Agreement to enhance demand response in the PJM region.

Filed Date: December 28, 2005.

Accession Number: 20051229–0230.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–409–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits First Revised Sheet No.13 *et al.* to FERC Electric Tariff, Fifth Revised Volume No. 11 pursuant to Order 661 & Order 661–A.

Filed Date: December 28, 2005.

Accession Number: 20051229–0178.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–411–000.

Applicants: Avista Corporation.

Description: Avista Corp submits a non-conforming agreement under its OATT, Original Volume No. 8 consisting of an Interconnection and Operating Agreement with the City of Chewelah, effective January 1, 2006.

Filed Date: December 28, 2005.

Accession Number: 20051230–0100.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–412–000.

Applicants: Avista Corporation.

Description: Avista Corp submits a non-conforming agreement under its OATT, Original Volume No. 8 consisting of an Interconnection and Operating Agreement with Modern Electric Water Co, etc.

Filed Date: December 28, 2005.

Accession Number: 20051230–0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–413–000.
Applicants: Avista Corporation.
Description: Avista Corp files a non-conforming agreement under its OATT, Original Volume No. 8 consisting of an Interconnection and Operating Agreement with Idaho County Light & Power Cooperative Assoc.
Filed Date: December 28, 2005.
Accession Number: 20051230–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–414–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits a non-conforming agreement under its OATT, Original Volume No. 8, consisting of an Interconnection & Operating Agreement with Clearwater Power Co.
Filed Date: December 28, 2005.
Accession Number: 20051230–0103.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–415–000.
Applicants: Avista Corporation.
Description: Avista Corp submits a non-conforming agreement under its OATT, Original Volume No. 8, consisting of an Interconnection & Operating Agreement with Inland Power & Light Co.
Filed Date: December 28, 2005.
Accession Number: 20051230–0091.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–416–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits a non-conforming agreement under its OATT, Original Volume No. 8 consisting of an Interconnection and Operating Agreement with Northern Lights Inc.
Filed Date: December 28, 2005.
Accession Number: 20051230–0092.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 2006.

Docket Numbers: ER06–417–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits a non-conforming agreement under its OATT, Original Volume No. 8 consisting of an Interconnection and Operating Agreement with the City of Plummer.
Filed Date: December 28, 2005.
Accession Number: 20051230–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 18, 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. E6–275 Filed 1–12–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

January 6, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–345–006.
Applicants: New England Power Pool Participants Committee.
Description: ISO New England, Inc submits semi-annual status report on load response programs pursuant to FERC's 2/25/03 Order.
Filed Date: 12/29/2005.
Accession Number: 20051230–0067.
Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER03–736–003; ER04–1153–001.
Applicants: CAM Energy Products, LP; CAM Energy Trading, LLC.
Description: CAM Energy Products, LP & CAM Energy Trading, LLC notifies the FERC of a change in status with regard to the representations upon which the FERC relied in granting market-based rate authority.
Filed Date: 12/29/2005.
Accession Number: 20051230–0065.
Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER05–695–001.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co dba Dominion Virginia Power submits a revised Standard Large Generator Interconnection Agreement with Tenaska Virginia II Partners, LP.
Filed Date: 12/29/2005.
Accession Number: 20051230–0062.
Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–418–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co submits a change in rates for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment.
Filed Date: 12/29/2005.
Accession Number: 20051230–0094.
Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–419–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Co submits for inclusion in its OATT revised tariff sheets that contain and accommodate standard procedures for large wind generation in compliance with Order 661 and 661–A, to become effective 1/18/06.
Filed Date: 12/29/2005.
Accession Number: 20051230–0095.
Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–420–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits the Special Facilities Agreement with Northern California

Power Agency et al. for Plumas-Sierra's 60 kV Interconnection at Quincy Substation.

Filed Date: 12/29/2005.

Accession Number: 20060103–0125.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–421–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits the Coordination Agreement with New York Independent System Operator which includes a rate schedule for Emergency Energy Pricing.

Filed Date: 12/29/2005.

Accession Number: 20051230–0096.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–422–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits revisions to its OATT, FERC Electric Tariff, Volume No. 8 pursuant to Interconnection for Wind Energy, Order No. 661–A.

Filed Date: 12/29/2005.

Accession Number: 20051230–0089.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–423–000.

Applicants: Boston Edison Company.

Description: Boston Edison Co submits executed Dewar Street Interconnection Agreement with New England Power Co and BECo dated as of 12/22/05, effective date of 1/1/06.

Filed Date: 12/29/2005.

Accession Number: 20051230–0090.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–425–000.

Applicants: El Segundo Power, LLC.

Description: El Segundo Power, LLC submits a Notice of Cancellation of Rate Schedule FERC No. 2, the Must-Run Service Agreement with the California Independent System Operator.

Filed Date: 12/29/2005.

Accession Number: 20051230–0063.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–426–000.

Applicants: Cabrillo Power I LLC.

Description: Cabrillo Power I, LLC submits revisions to the Reliability Must-Run Service Agreement between Cabrillo I and the California Independent System Operator Corp.

Filed Date: 12/29/2005.

Accession Number: 20051230–0064.

Comment Date: 5 p.m. eastern time on Tuesday, January 17, 2006.

Docket Numbers: ER06–427–000.

Applicants: Mystic Development, LLC.

Description: Mystic Development, LLC submits its proposed FERC Electric Tariff, Original Volume No. 2, & supporting cost data specifying Mystic's revenue requirement for providing cost-based reliability services.

Filed Date: 12/29/2005.

Accession Number: 20051230–0107.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 2006.

Docket Numbers: ER06–428–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Co submits specific revisions to its Pro Forma OATT pursuant to the applicable tariff filing requirements.

Filed Date: 12/29/2005.

Accession Number: 20060103–0009.

Comment Date: 5 p.m. eastern time on Thursday, January 19, 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 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. E6–276 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–1–000]

CenterPoint Energy Gas Transmission; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Carthage to Perryville Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

January 6, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will address the environmental impacts of the Carthage to Perryville Project proposed by CenterPoint Energy Gas Transmission (CEGT). The Commission will use the EIS in its decisionmaking process to determine whether or not to authorize the project. This notice explains the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine the issues that need to be evaluated in the EIS. Please note that the scoping period will close on February 10, 2006.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meetings we have scheduled as follows:

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Date and time	Location
Tuesday, January 24, 2006, 7 p.m. to 9 p.m. (CST)	Texas Country Music Hall of Fame, 300 West Panola Street, Carthage, TX 75633. Telephone: (903) 693–3869.
Wednesday, January 25, 2006, 7 p.m. to 9 p.m. (CST)	Quitman High School Auditorium, 181 Wolverine Drive, Quitman, LA 71268. Telephone: (318) 259–2698.
Thursday, January 26, 2006, 7 p.m. to 9 p.m. (CST)	Delhi Civic Center, 232 Denver Street, Delhi, LA 71232. Telephone: (318) 878–3792.

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a CEGT representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

CEGT proposes to construct, own, operate, and maintain a natural gas pipeline to provide new pipeline capacity to transport domestic onshore gas supplies from the Barnett Shale and Bossier Sand production areas in eastern Texas, as well as the Elm Grove and Vernon Field production areas in Louisiana. CEGT indicates that the proposed facilities would facilitate the transport of natural gas to the Midwest and Northeastern regions of the United States and help satisfy demand in those markets. The proposed pipeline would originate from receipt points near Carthage in Panola County, Texas, and extend to a terminus at interconnections with four existing interstate pipelines located within CEGT's Perryville Hub, near Delhi in Richland Parish, Louisiana. The general location of the proposed pipeline is shown in the figure included as Appendix 1.[2]

The Carthage to Perryville Project facilities under FERC jurisdiction would include:

- 171.6 miles of 42-inch-diameter natural gas pipeline in Panola County, Texas, and Caddo, De Soto, Red River, Bienville, Jackson, Ouachita, and Richland Parishes, Louisiana;
- Two compressor stations, the Panola and Vernon Compressor Stations, located in Panola County, Texas, and Jackson Parish, Louisiana, respectively (phased construction with initially installed gas turbine-driven compression of 10,310 horsepower (hp) to be expanded to 20,620 hp at each station by October 2008);
- Two meter and regulator stations at receipt points with three intrastate pipelines, including:

—Energy Transfer Fuels Meter/Regulator Station in Panola County, Texas

—Duke Energy Field Services-Enbridge Meter/Regulator Station in Panola County, Texas;

- Four new meter and regulator stations at interconnects with existing interstate pipelines, including:

—Texas Gas Meter/Regulator Station in Ouachita Parish, Louisiana

—ANR Meter/Regulator Station in Richland Parish, Louisiana

—Trunkline Meter/Regulator Station in Richland Parish, Louisiana

—Columbia Gulf Meter/Regulator Station in Richland Parish, Louisiana; and

- 10 mainline valves.

The project would be designed and constructed to receive and transport about 1.2 billion cubic feet of natural gas per day. CEGT proposes to have the project constructed and operational by February 2007.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to CEGT.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project pipeline would be 100 feet wide. Following construction, CEGT would retain a 60-foot-wide permanent right-of-way for operation of the project. Additional, temporary extra workspaces beyond the typcial construction right-of-way limits would be required at certain feature crossings (*e.g.*, roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques.

Based on preliminary information, construction of the proposed project facilities would affect a total of about 2,398.4 acres of land. Following construction, about 1,247.9 acres would be maintained as permanent right-of-way, and about 56.8 acres of land would be maintained as new aboveground facility sites. The remaining 1,093.7 acres of temporary workspace (including all temporary construction rights-of-way, extra workspaces, and pipe storage and contractor yards) would be restored and allowed to revert to its former use.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impact that could result if the CEGT project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Air quality and noise;
- Cultural resources;
- Socioeconomics;
- Reliability and safety; and
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its NEPA Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, State, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided in Appendix 2.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by CEGT. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effects on prime farmland soils and soils with a high potential for compaction.
- Potential impacts to perennial and intermittent streams and waterbodies.
- Potential effects on waterbodies designated under Federal and/or State programs, including Saline Bayou and Black Lake Bayou.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Potential impacts to fish and wildlife habitat, including waterbird nesting areas along major river crossings.
- Potential effect on federally and State-listed species, including the red-cockaded woodpecker, bald eagle, pallid sturgeon, least tern, pine snake, and Louisiana black bear.
- Potential impacts to existing land uses, including agricultural and managed forested lands.
- Potential visual effects of the aboveground facilities on surrounding areas.
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Potential impacts to local air and noise quality associated with construction and operation.
- Assessment of potential cultural resources along the pipeline route.
- Native American and tribal concerns.
- Public safety and potential hazards associated with the transport of natural gas.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.
- Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 3, DG2E.
- Reference Docket No. PF06–1–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before February 10, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

The public scoping meetings (dates, times, and locations are listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once CEGT formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request

intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the project docket number excluding the last three digits (*i.e.*, PF06–1) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, CEGT has established an Internet Web site for this project at *http://www.centerpointenergy.com/carthagetoperryville/*. The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to CEGT at 1–888–641–8326 or *carthagetoperryville@CenterPointEnergy.com*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–286 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–26–000]

Dominion Cove Point LNG, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cove Point Air Separation Unit Project and Request for Comments on Environmental Issues

January 6, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cove Point Air Separation Unit Project involving construction and operation of facilities by Dominion Cove Point LNG, L.P. (Dominion) in Calvert County, Maryland. These facilities would consist of two air separation units, a liquid nitrogen storage tank, a gas turbine generator, a site rating generator and associated instrumentation and equipment at the existing Cove Point Liquefied Natural Gas (LNG) Terminal. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on February 6, 2006.

This notice is being sent to landowners within 0.5 mile of the project area; Federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; local libraries and newspapers in this proceeding. Government representatives are encouraged to notify their constituents of this proposal and advise them to comment on their areas of concern.

The purpose of the Project is to add facilities to the terminal that would increase the capability of the LNG import terminal to process high British Thermal Unit (BTU) content LNG in order to assure that the resulting natural gas meets the gas quality specifications. The proposed facilities would also enhance the reliability of service at the terminal and provide more flexibility to acquire and schedule cargoes of LNG from a wider variety of supply sources.

Dominion seeks authority to construct and operate:

- Two air separation units;
- One 62,825 gallon liquid nitrogen storage tank;
- Two electric substations and associated automation and electric facilities;
- One 20,500 horsepower (HP) - International Standards Organization (ISO) rating Solar Titan simple cycle gas turbine generator;
- One 13,800 volt, 13.2 megawatt (MW) site rating generator;
- Fuel gas equipment and piping;
- Associated instrumentation; and
- Fiber optic and electrical duct banks.

All construction activities would take place within the existing Cove Point Terminal. No additional land would be required for construction.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filling comments provided below.

In the EA we [1] will discuss impacts that could occur as a result of the construction and operation of the proposed project.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Dominion. This preliminary list of issues may be changed based on your comments and our analysis.

- The installation of a 20,500 HP gas turbine generator may substantially increase air contaminant emissions from the Dominion Cove Point facility above currently permitted emission levels.
- The installation of a 20,500 HP gas turbine generator and two air separation units may increase noise levels at affected noise-sensitive areas (NSAs).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP06–26–000.
- Mail your comments so that they will be received in Washington, DC, on or before February 6, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.[2] If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Stakeholders and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–278 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

[1] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[3] The appendix referenced in this notice is not being printed in the **Federal Register.** Copies of the appendix was sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–8–000]

Golden Pass Pipeline LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Golden Pass Optimized Pipeline Project and Request for Comments on Environmental Issues

January 6, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that discusses the environmental impacts of Golden Pass Pipeline LP's (Golden Pass)

proposed Optimized Pipeline Project (OP Project or Project) which involves design and route changes to the pipeline facilities previously approved as part of the Golden Pass LNG Terminal and Pipeline Project.[1] In the OP Project, Golden Pass proposes the following changes to the previously authorized facilities: (1) Replace the dual 36-inch-diameter pipelines (mainline and loop) with a single 42-inch-diameter pipeline and (2) incorporate a route change that would replace about 20.4 miles of pipeline with about 11.6 miles of pipeline, thus reducing the total length of the pipeline by about 8.8 miles.

The OP Project is currently in the preliminary stages of design and at this time a formal application has not been filed with the Commission. For this project, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the formal application. This allows interested stakeholders to become involved early in the project planning and to identify and resolve issues before a formal application is filed with the FERC. A docket number (PF06–8–000) has been established to place information filed by Golden Pass and related documents issued or received by the Commission, into the public record.[2] Once a formal application is filed with the FERC, a new docket number will be established.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the Project. Please note that the scoping period will close on February 6, 2006. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to potentially affected landowners along the OP Project route; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we[3] are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

In the Commission's July 6, 2005 Order, Golden Pass was authorized to construct and operate approximately 77.8 miles of 36-inch-diameter mainline, 42.8 miles of 36-inch-diameter loop, and 1.8 miles of 24-inch-diameter pipeline and related pipeline facilities. These facilities (or the Authorized Pipeline) would be used to transport natural gas on an open-access basis from the proposed Golden Pass LNG Terminal on the Port Arthur ship channel to various interstate and intrastate pipelines in Texas and Louisiana.

Golden Pass proposes in the OP Project to construct and operate a single 42-inch-diameter pipeline, in place of the 42.8 miles of dual 36-inch-diameter pipelines and shorten the pipeline route. This proposal would involve only those pipeline facilities in Jefferson and Orange Counties, Texas. Authorized Pipeline facilities in Newton County, Texas, and Calcasieu Parish, Louisiana, would not be affected by the proposed OP Project. A map illustrating the authorized facilities and the proposed OP Project is provided in Appendix 1.[4]

Non-Jurisdictional Facilities

There are no proposed non-jurisdictional facilities associated with this proposal.

Land Requirements for Construction

Construction of the OP Project would reduce the total acreage of land impacted by the Authorized Pipeline as a result of the design change (from two 36-inch-diameter pipelines to one 42-inch-diameter pipeline) and the route change (from 20.4 miles to 11.6 miles). The typical overland construction right-of-way width would be reduced from 125 feet to 100 feet, and the operating right-of-way width would be reduced from 75 feet to 50 feet. The typical open water construction right-of-way width would be reduced from 375 feet to 300 feet, and the operating right-of-way width would be reduced from 125 feet to 50 feet. The 225-foot-wide construction right-of-way and the 125-foot-wide operating right-of-way along horizontal directional drills would be reduced to 150 feet and 50 feet, respectively. The OP Project would be approximately 8.8 miles shorter than the corresponding segment of the Authorized Pipeline.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status

[1] On July 6, 2005, the Commission approved the Golden Pass LNG Terminal and Pipeline Project in Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, and CP04–402–000. The Golden Pass LNG Terminal and Pipeline Project included a liquefied natural gas (LNG) terminal and associated LNG facilities, 77.8 miles of 36-inch-diameter mainline pipeline, 42.8 miles of 36-inch-diameter looping pipeline that would be constructed adjacent to the mainline, and associated pipeline facilities.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch at 1–202–502–8371. For instructions on connecting to eLibrary refer to the Additional Information section of this notice.

should follow the instructions for filing comments below.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues is included in the EA. Depending on the comments received during the scoping process, the EA would be published and mailed to Federal, State, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period would be allotted for review of the EA. All comments received on the EA would be considered before we make our recommendations to the Commission. The EA is used by the Commission in its decisionmaking process to determine whether the Project is in the public convenience and necessity.

To ensure your comments are considered, please carefully follow the instructions in the public participation section described later in this notice.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Golden Pass. This preliminary list of issues may be changed based on your comments and our analysis.

➢ Water Resources
- Impact on water quality.
- Impact on wetlands.

➢ Endangered and Threatened Species
- Impact on essential fish habitat.

➢ Reliability and Safety
- Assessment of hazards associated with natural gas pipelines.

➢ Air Quality and Noise
- Impacts from construction of the pipeline on residences.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. By becoming a commentor, your concerns may be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they may be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. PF06–8–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before February 6, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments, you will need to open a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". However, there is no procedure for parties to become intervenors during the pre-filing process. You may request intervenor status after Golden Pass files its formal certificate application with the Commission and is assigned a "CP" docket number.

Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, see Appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you do not want to send comments at this time, but still want to remain on our mailing list, please return the attached Mailing List Retention Form (Appendix 3). If you do not return the form, you will be taken off the mailing list.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 1–202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

EventCalendar/EventsList.aspx along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–277 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–3–000]

Rockies Express Pipeline, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Rockies Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

January 6, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that discusses the environmental impacts of the proposed Rockies Express Pipeline Project, Western Phase (the Project), which involves the construction and operation of facilities by Rockies Express Pipeline, LLC (Rockies Express) in Colorado, Wyoming, Nebraska, Kansas, and Missouri. These facilities would consist of 710 miles of 42-inch-diameter natural gas pipeline, 5 new compressor stations; and approximately 42 mainline valves and 12 interconnects. This EIS will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help us determine which issues/impacts need to be evaluated in the EIS. Please note that the scoping period for the Project will close on February 10, 2006.

Comments may be submitted in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meetings that have been scheduled in the Project area. Nine scoping meetings are scheduled for January 23 through 27, 2006 in various locations along the route. Further instructions on how to submit written comments and additional details of the public scoping meetings are provided in the public participation section of this notice.

The Rockies Express Project, Western Phase, is currently in the preliminary stages of design, and at this time a formal application has not been filed with the Commission. For this proposal, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the application. This allows interested stakeholders to become involved early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF06–3–000) has been established to locate in the public record information filed by Rockies Express and related documents issued by the Commission.[1] Once a formal application is filed with the FERC, a new docket number will be established.

With this notice, we[2] are asking other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

This notice is being sent to landowners within 0.5 mile of the proposed compressor stations; landowners along the pipeline route under consideration; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers; and other interested parties.

Some affected landowners may be contacted by a Project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, Rockies Express and the affected landowners should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the facilities. Therefore, if easement negotiations fail to produce an agreement, Rockies Express could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Rockies Express' long-term plan is to construct three separately certificated pipelines that together would result in the installation of approximately 1,323 miles of 42-inch-diameter, high pressure natural gas pipeline linking producing areas in the Rocky Mountain region to the upper Midwest and Eastern United States. This pipeline system would originate near the Cheyenne Hub, in Weld County, Colorado, and would terminate in Monroe County, Ohio. Rockies Express intends to pursue this system plan in three discrete phases (Western, Central, and Eastern). The FERC is now considering only the facilities included in the Western Phase. Rockies Express currently envisions that the Western Phase would include:

- Approximately 710 miles of 42-inch-diameter pipeline between the Cheyenne Hub in Weld County, Colorado and the Panhandle Eastern Pipeline system in Audrain County, Missouri;
- 5 new compressor stations with a total of 116,500 horsepower of compression;
- Approximately 42 mainline valves; and
- 12 interconnects.

A map depicting the general location of the Project facilities is shown in appendix 1.[3]

Rockies Express is requesting approval such that the facilities are completed and placed into service by January 2008. Construction of the facilities would take about eight months.

Land Requirements for Construction

It is estimated that the construction of the Project facilities would disturb about 6,929 acres of land. Following construction, about 4,358 acres of the total would be retained for the operation of the pipeline and the above ground facilities (compressor/meter stations). The pipeline would be constructed on a 125-foot-wide right-of-way with occasional increases in width for additional workspace at waterbody,

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this Notice.

wetland, road, and railroad crossings. Extra workspaces may also be required in areas with site-specific constraints, such as side-slope construction. Other temporary land requirements would include land for pipe storage and equipment yards. Operation of the pipeline facilities would require a nominal 50-foot-wide permanent right-of-way.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public would have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice of Intent, the Commission staff requests agency and public comments on the scope of the issues to be addressed in the EIS. All comments received are considered during the preparation of the EIS.

We have already started to meet with Rockies Express, agencies, and other interested stakeholders to discuss the Project and identify issues/impacts and concerns. Between December 5 and 16, 2005, representatives of FERC staff participated in public open houses sponsored by Rockies Express in the Project area to explain the NEPA environmental review process to interested stakeholders and take comments about the Project.

Our independent analysis of the issues will be included in the draft EIS. The draft EIS will be published and mailed to Federal, State, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Rockies Express. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:

—Impact on agricultural lands and irrigation systems.
—Impact on prime farmland soils.
—Blasting and disposal of excess rock.
—Erosion control.
—Evaluation of noxious weed control measures.

- Water Resources:

—Impact on groundwater and water supply wells.
—Impact of construction on wetlands.
—Assessment of the use and release of hydrostatic test water.

- Fish, Wildlife, and Vegetation:

—Development of revegetation plans.

- Endangered and Threatened Species:

—Potential effect on federally listed species.

- Cultural Resources:

—Impact on known and undiscovered cultural resources.
—Native American and tribal concerns.

- Land Use, Recreation and Special Interest Areas, and Visual Resources:

—Permanent land use alteration associated with pipeline easement.
—Impact on residences, including proximity of facilities to existing structures.
—Restrictions on future use of pipeline right-of-way.

- Socioeconomics:

—Benefits to local communities.
—Use of local labor, equipment, and supplies.

- Air Quality and Noise:

—Effects on local air quality and ambient noise from construction and operation of the proposed facilities.

- Reliability and Safety:

—Assessment of hazards associated with the transportation of natural gas.
—Assessment of security associated with operation of natural gas facilities.

- Alternatives:

—Evaluation of pipeline route alternatives.
—Identification of measures to lessen or avoid impacts on the various resource and special interest areas.

We will make recommendations on how to lessen or avoid impacts on the various resource areas and evaluate possible alternatives to the proposed Project or portions of the Project.

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about Rockies Express' proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To expedite the receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments you will need to create a free account by clicking on "Sign-up" under "New User." You will be asked to select the type of submission you are making. This type of submission is considered a "Comment on Filing." Comments submitted electronically must be submitted by February 10, 2006.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before February 10, 2006 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. PF06–3–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before February 10, 2006.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings we will conduct in the Project area. The locations for these meetings are listed below. All meetings are scheduled to run from 7 p.m. to 9 p.m.

January 23, 2006	Greeley, Colorado, Best Western Inn, 701 8th Street, Greeley, Colorado, 970–353–8444.	
January 24, 2006	Sidney, Nebraska, Holiday Inn, 664 Chase Blvd., Sidney, Nebraska, 308–254–2000.	St Joseph, Missouri, Stoney Creek Inn, 1201 N. Woodbine, St. Joseph, Missouri, 800–659–2220.

January 25, 2006	North Platte, Nebraska, Quality Inn Sandhills Convention Center, 2102 South Jeffers, North Platte, Nebraska, 308–532–9090.	Beatrice, Nebraska, Holiday Inn Express, 4005 N. 6th Street, Beatrice, Nebraska, 402–228–7000.
January 26, 2006	Kearney, Nebraska, Holiday Inn Kearney, 110 Second Avenue, Kearney, Nebraska, 308–234–2212.	Moberly, Missouri, Best Western Inn, 1200 Hwy 24 East, Moberly, Missouri, 660–263–6540.
January 27, 2006	Hastings, Nebraska, Hastings Convention Center, Holiday Inn Garden Center, 2201 Osborne Drive, Hastings, Nebraska, 402–463–4661.	Chillicothe, Missouri, Grand River Inn, 606 W. Bus. Hwy 36, Chillicothe, Missouri, 888–317–8290.

The public scoping meetings are designed to provide State and local agencies, interested groups, affected landowners, and the general public with another opportunity to offer your comments on the Project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

All public meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Environmental Mailing List

If you received this notice, you are on the environmental mailing list for this Project and will continue to receive Project updates including the draft and final EISs. If you want your contact information corrected or you do not want to remain on our mailing list, please return the Correct or Remove From Mailing List Form included as Appendix 2.

To reduce printing and mailing costs, the draft and final EISs will be issued in both CD–ROM and hard copy formats. The FERC strongly encourages the use of the CD–ROM format in its publication of large documents. If you wish to receive a paper copy of the draft EIS instead of a CD–ROM, you must indicate that choice on the return postcard (Appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Magalie R. Salas,

Secretary.

[FR Doc. E6–287 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

January 5, 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.:* 12617–000.

c. *Date filed:* October 3, 2005.

d. *Applicant:* Fall Creek Hydro, LLC.

e. *Name and Location of Project:* The proposed Fall Creek Hydroelectric Project would be located on Fall Creek in Lane County, Oregon. The existing Fall Creek Dam is administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent Smith, Northwest Power Services, Inc., 975 South State Highway, Logan, UT 84321, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12617–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed project, utilizing the existing U.S. Army Corps of Engineers' Fall Creek Dam and reservoir would consist of: (1) A proposed intake structure, (2) a proposed 650-foot-long, 144-inch-diameter steel penstock, (3) a proposed powerhouse containing a generator unit with an installed capacity of 4.7 megawatts, (4) a 1.0-mile-long, 15 kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 17.9 GWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–261 Filed 1–12–06; 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

January 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to revise to install minimum flow turbine.

b. *Project No:* 2513–066.

c. *Date Filed:* December 19, 2005.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Essex 19 Project.

f. *Location:* The Project is located on the Winooski River in the townships of Essex Junction and Williston, Chittenden County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT 05446–1949. Tel: (802) 655–8777.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and/or motions:* February 3, 2006.

k. *Description of Filing:* Green Mountain Power Corporation proposes to install a 850 kilowatt minimum flow generating unit to provide greater hydraulic control in maintaining the project's required minimum flow while allowing for more efficient operation and generation during both high and low flow conditions.

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. 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 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. *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. E6–262 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security; Constrained Economic Dispatch; Notice Announcing Joint Board Meetings

January 6, 2006.

On September 30, 2005, the Commission issued an order convening regional joint boards [1] pursuant to section 1298 of the Energy Policy Act of 2005,[2] which added section 223 to the Federal Power Act (FPA).[3] FPA section 223 requires the Commission to convene joint boards on a regional basis pursuant to FPA section 209 "to study the issue of security constrained economic dispatch for the various market regions," "to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating * * * affects or enhances the reliability and affordability of service," and "to make recommendations to the Commission." Initial joint board meetings were held in November 2005.[4]

Take notice that further joint board meetings will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., in Washington DC. The schedule for the meetings is:

South region—Sunday, February 12, 2006—9:30 a.m. to 12 p.m.

PJM/MISO region—Sunday, February 12, 2006—12:30 p.m. to 3 p.m.

West region Monday, February 13, 2006—9:45 a.m. to 12:15 p.m.

Northeast region—Monday, February 13, 2006—9:45 a.m. to 12:15 p.m.

These meeting are open to the public. Additional details regarding these meetings, if any, will be announced in supplemental notices in this docket and posted on the Commission's Web site at *http://www.ferc.gov*.

Take further notice that Commissioner Samuel J. Ervin, IV of North Carolina is now serving as Vice Chair of the Joint Board for the South region.

A free webcast of the meetings announced above is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be immediately available for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

For more information about the meeting, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–288 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Joint Boards on Security Constrained Economic Dispatch*, 112 FERC ¶ 61,353 (2005) (September 30 Order).

[2] Public Law No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. 824 *et seq.* (2000).

[4] Notices concerning the initial joint board meetings were issued on October 14, 21 and 27, 2005, and on November 9, 16 and 18, in accordance with the September 30 Order.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2237–013—Georgia Morgan Falls Hydroelectric Project]

Georgia Power Company; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in The National Register of Historic Places

January 6, 2006.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active

[1] 18 CFR Section 385.2010.

participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Georgia State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Morgan Falls Hydroelectric Project No. 2237–013 (SHPO Reference Number HP–040120–022).

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Morgan Falls Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Georgia Power Company, as licensee for Project No. 2237, and the Muskogee (Creek) Nation of Oklahoma, the Poarch Band of Creek Indians, the Thlopthlocco Tribal Town, the Kialegee Tribal Town, the Alabama-Quassarte Tribal Town, the Seminole Indian Tribe, the Seminole Nation of Oklahoma, the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians, and the National Park Service have expressed an interest in this proceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Larry Wall and Scott Hendricks or Representative, Georgia Power Company, 241 Ralph McGill Blvd, Atlanta, GA 30308.

Elizabeth Shirk or Representative, Georgia Department of Natural Resources, Historic Preservation Division, 34 Peachtree Street, NW., Suite 1600, Atlanta, GA 30303–2316.

Jeff Duncan or Representative, National Park Service, 175 Hamm Rd, Suite C, Chattanooga, TN 37405.

Eastern Band of Cherokee Indians, Attention: Michelle Hamilton, THPO, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

Dr. Richard L. Allen, Policy Analyst, Cherokee Nation, P.O. Box 948, Tahlequah, Oklahoma 74465.

Evelyn Bucktrot, Town King, Kialegee Tribal Town, P.O. Box 332, 108 N. Main Street, Wetumka, OK 74883.

Emman Spain, Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884.

Willard Steele, Seminole Tribe of Florida, Ah-Tah-Thi-Ki Museum, HC 61, Box 21 A, Clewiston, FL 33440.

Robert Thrower, Poarch Band of Creek Indians, 5811 Jack Springs Rd., Atmore, AL 36502.

Charles Coleman, Thlopthlocco Tribal Town, Rt. 1 Box 190–A, Weleetka, OK 74880.

Augustine Asbury, Alabama-Quassarte Tribal Town, P.O. Box 187, Wetumka, OK 74883.

Joyce Bear, Muskogee (Creek) Nation, P.O. Box 580, Highway 75 and Loop 56, Okmulgee, OK 74447.

Steve Mouse, United Keetoowah Board of Cherokee Indians, P.O. Box 189, Parkhill, OK 74456.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it Non-Public Information.

An original and 8 copies of any such motion must be filed with Ms. Magalie R. Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426), and must be served on each person whose name appears on the official service list. Please put the project name "Morgan Falls Hydroelectric Project" and number "P–2237–013" on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Magalie R. Salas,

Secretary.

[FR Doc. E6–285 Filed 1–12–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[IN166–1; FRL–8021–3]

Approval of Section 112(l) Delegation of Maximum Achievable Control Technology Standards; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is notifying the public that delegation of the authority to implement and enforce the following maximum achievable control technology (MACT) standards was approved in a letter from EPA to IDEM dated November 30, 2005: Chemical Recovery Combustion Sources at Kraft, Soda Sulfite, and Stand-alone Semichemical Pulp Mills; Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Manufacturing of Nutritional Yeast; Wet-Formed Fiberglass Mat Production; Leather Finishing Operations; Cellulose Products Manufacturing; Rubber Tire Manufacturing; Pharmaceuticals Production; Amino and Phenolic Resins; Polyether Polyols Production; Solvent Extraction for Vegetable Oil Production; Semiconductor Manufacturing; Refractory Products Manufacturing; Surface Coating of Large Appliances; Surface Coating of Metal Coil; Paper and Other Web Coating; Flexible Polyurethane Foam Fabrication Operations; Municipal Solid Waste Landfills; Friction Material Manufacturing Facilities; Polyvinyl Chloride and Copolymers Production; Secondary Aluminum; Asphalt Processing and Asphalt Roofing; Brick and Structural Clay Products; Clay Ceramics Manufacturing; Coke Ovens: Pushing, Quenching, and Battery Stacks; Engine Test Cells/Stands; Hydrochloric Acid Production; Printing, Coating and Dyeing Fabrics and other Textiles; Surface Coating of Metal Furniture; Surface Coating of Wood Building Products; Reciprocating Internal Combustion Engines; Organic Liquid Distribution (Non-Gasoline); Miscellaneous Organic Chemical Manufacturing; Surface Coating of Automobiles; Surface Coating of Metal Cans; Site Remediation; Miscellaneous

Coating Manufacturing; Stationary Combustion Turbines; Lime Manufacturing Plants; Iron and Steel Foundries; and Integrated Iron and Steel Manufacturing; Mercury Cell Chlor-Alkali Plants.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking today?

The purpose of this notice is to announce that EPA approved a request for delegation of the MACT standards for Chemical Recovery Combustion Sources at Kraft, Soda Sulfite, and Stand-alone Semichemical Pulp Mills; Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Manufacturing of Nutritional Yeast; Wet-Formed Fiberglass Mat Production; Leather Finishing Operations; Cellulose Products Manufacturing; Rubber Tire Manufacturing; Pharmaceuticals Production; Amino and Phenolic Resins; Polyether Polyols Production; Solvent Extraction for Vegetable Oil Production; Semiconductor Manufacturing; Refractory Products Manufacturing; Surface Coating of Large Appliances; Surface Coating of Metal Coil; Paper and Other Web Coating; Flexible Polyurethane Foam Fabrication Operations; Municipal Solid Waste Landfills; Friction Material Manufacturing Facilities; Polyvinyl Chloride and Copolymers Production; Secondary Aluminum; Asphalt Processing and Asphalt Roofing; Brick and Structural Clay Products; Clay Ceramics Manufacturing; Coke Ovens: Pushing, Quenching, and Battery Stacks; Engine Test Cells/Stands; Hydrochloric Acid Production; Printing, Coating and Dyeing Fabrics and other Textiles; Surface Coating of Metal Furniture; Surface Coating of Wood Building Products; Reciprocating Internal Combustion Engines; Organic Liquid Distribution (Non-Gasoline); Miscellaneous Organic Chemical Manufacturing; Surface Coating of Automobiles; Surface Coating of Metal Cans; Site Remediation; Miscellaneous Coating Manufacturing; Stationary Combustion Turbines; Lime Manufacturing Plants; Iron and Steel Foundries; and Integrated Iron and Steel Manufacturing; Mercury Cell Chlor-Alkali Plants (i.e., 40 CFR part 63, subparts: MM, UUU, CCCC, HHHH, TTTT, UUUU, XXXX, GGG, OOO, PPP, GGGG, BBBBB, SSSSS, NNNN, SSSS, JJJJ, MMMMM, AAAA, QQQQQ, J, RRR, LLLLL, JJJJJ, KKKKK, CCCCC, PPPPP, NNNNN, OOOO, RRRR, QQQQ, ZZZZ, EEEE, FFFF, IIII, KKKK, GGGGG, HHHHH, YYYY, AAAAA, EEEEE, FFFFF, and IIIII respectively). EPA also delegated the applicable Category I authorities for these standards and all previously delegated standards under the general provisions as set forth in 40 CFR 63.91(g) pursuant to section 112(l) of the Clean Air Act (CAA). The State's mechanism of delegation involves State rule adoption of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards was implemented by a letter dated November 30, 2005 from EPA to the Indiana Department of Environmental Management (IDEM).

All notifications, reports and other correspondence required under section 112 standards should be sent to the State of Indiana rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Pursuant to Section 112(l)(7) of the CAA, nothing in this delegation prohibits EPA from enforcing any applicable emission standard or requirement.

II. EPA approved the delegation under what authority?

On November 14, 1995, EPA approved Indiana's program of delegation for part 70 sources (**Federal Register** (60 FR 57118)). On July 8, 1997, EPA approved Indiana's program of delegation for non-part 70 sources (**Federal Register** (62 FR 36460)). The approved program of delegation met the criteria for approval for straight delegation found in 40 CFR 63.91(d), specifically an approved Title V program. The approved program of delegation can be used to delegate MACT standards unchanged from the federal standards to Indiana since Indiana has satisfied the Section 63.91(d) up-front approval requirements and it continues to maintain an approved Title V program.

III. Which standards has IDEM submitted to EPA for approval under Indiana's air toxics program delegation mechanism?

On February 14, 2005 and September 19, 2005, IDEM requested delegation of implementation and enforcement authority of the MACT standards for Chemical Recovery Combustion Sources at Kraft, Soda Sulfite, and Stand-alone Semichemical Pulp Mills; Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Manufacturing of Nutritional Yeast; Wet-Formed Fiberglass Mat Production; Leather Finishing Operations; Cellulose Products Manufacturing; Rubber Tire Manufacturing; Pharmaceuticals Production; Amino and Phenolic Resins; Polyether Polyols Production; Solvent Extraction for Vegetable Oil Production; Semiconductor Manufacturing; Refractory Products Manufacturing; Surface Coating of Large Appliances; Surface Coating of Metal Coil; Paper and Other Web Coating; Flexible Polyurethane Foam Fabrication Operations; Municipal Solid Waste Landfills; Friction Material Manufacturing Facilities; Polyvinyl Chloride and Copolymers Production; Secondary Aluminum; Asphalt Processing and Asphalt Roofing; Brick and Structural Clay Products; Clay Ceramics Manufacturing; Coke Ovens: Pushing, Quenching, and Battery Stacks; Engine Test Cells/Stands; Hydrochloric Acid Production; Printing, Coating and Dyeing Fabrics and other Textiles; Surface Coating of Metal Furniture; Surface Coating of Wood Building Products; Reciprocating Internal Combustion Engines; Organic Liquid Distribution (Non-Gasoline); Miscellaneous Organic Chemical Manufacturing; Surface Coating of Automobiles; Surface Coating of Metal Cans; Site Remediation; Miscellaneous Coating Manufacturing; Stationary Combustion Turbines; Lime Manufacturing Plants; Iron and Steel Foundries; and Integrated Iron and Steel Manufacturing; Mercury Cell Chlor-Alkali Plants (i.e., 40 CFR part 63, subparts: MM, UUU, CCCC, HHHH, TTTT, UUUU, XXXX, GGG, OOO, PPP, GGGG, BBBBB, SSSSS, NNNN, SSSS, JJJJ, MMMMM, AAAA, QQQQQ, J, RRR, LLLLL, JJJJJ, KKKKK, CCCCC, PPPPP, NNNNN, OOOO, RRRR, QQQQ, ZZZZ, EEEE, FFFF, IIII, KKKK, GGGGG, HHHHH, YYYY, AAAAA, EEEEE, FFFFF, and IIIII respectively). The State of Indiana's rules 326 Indiana Administrative Code (IAC) 20–49, 326 IAC 20–50, 326 IAC 20–51, 326 IAC 20–52, 326 IAC 20–53, 326 IAC 20–54, 326

IAC 20–55, 326 IAC 20–57, 326 IAC 20–58, 326 IAC 20–59, 326 IAC 20–60, 326 IAC 20–61, 326 IAC 20–62, 326 IAC 20–63, 326 IAC 20–64, 326 IAC 20–65, 326 IAC 20–66, 326 IAC 20–67, 326 IAC 20–68, 326 IAC 20–69, 326 IAC 20–70, 326 IAC 20–71, 326 IAC 20–72, 326 IAC 20–73, 326 IAC 20–74, 326 IAC 20–75, 326 IAC 20–76, 326 IAC 20–77, 326 IAC 20–78, 326 IAC 20–79, 326 IAC 20–82, 326 IAC 20–83, 326 IAC 20–84, 326 IAC 20–85, 326 IAC 20–86, 326 IAC 20–87, 326 IAC 20–88, 326 IAC 20–90, 326 IAC 20–91, 326 IAC 20–92, 326 IAC 20–93, and 326 IAC 20–94 incorporate these MACT standards into the State's rules unchanged from the Federal regulations.

Dated: December 29, 2005.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E6–369 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6671–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050298, ERP No. D–AFS–J65448–UT, West Bear Vegetation Management Project, Timber Harvesting, Prescribed Burning, Roads Construction, Township 1 North, Range 9 East, Salt Lake Principle Meridian, Evanston Ranger District, Wasatch-Cache National Forest, Summit County, UT.

Summary: EPA expressed environmental concerns about the potential for impacts to aquatic and terrestrial resources, and identified the need for additional information on monitoring and mitigation. Rating EC2.

EIS No. 20050351, ERP No. D–SFW–K65493–CA, East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, Implementation, Incidental Take Permit, Cities of Brentwood, Clayton, Oakley and Pittsburg, Contra Costa County, CA.

Summary: EPA expressed concerns about the uncertainties of preserve land acquisition in areas with conflicting General Plan zoning or in nonparticipating jurisdictions, and requested additional information regarding alternatives to these acquisition areas to protect covered species. Rating EC2.

EIS No. 20050399, ERP No. D–BLM–L65496–AK, Ring of Fire Resource Management Plan, Implementation, Alaska Peninsula , Kodiak Island and Aleutain Islands, AK.

Summary: EPA generally supports the proposal to designate the Neacola Mountains Area of Critical Environmental Concern (ACEC), Knik River and Haines Block Special Recreation Management Areas. However, EPA has concerns about the adequacy of some required operating procedures and lease stipulations and recommended improvements for consideration in the Final EIS. Rating EC2.

EIS No. 20050452, ERP No. D–BLM–G65099–NM, Kasha-Katuwe Tent Rocks National Monument Resource Management Plan, Implementation, Rio Puerco Field Office, Sandoval County, NM.

Summary: EPA does not object to the selection of the preferred alternative. Rating LO.

EIS No. 20050454, ERP No. D–FRC–D03005–00, Cove Point Expansion Project, Construction and Operation of a Liquefied Natural Gas (LNG) Import Terminal Expansion and Natural Gas Pipeline Facilities, U.S. Army COE Section 404 Permit, Docket Nos. CPO5–130–000, CP05–131–000 and CP05–132–00, PA, VA, WV, NY and MD.

Summary: EPA expressed environmental concerns and requested that the Final EIS include mitigation plans for both air quality and wetland impacts, as well as address environmental justice issues related to the project. Rating EC2.

Final EISs

EIS No. 20050426, ERP No. F–FTA–K40243–CA, Mid-City/Westside Transit Corridor Improvements, Wilshire Bus Rapid Transit and Exposition Transitway, Construction and Operation, Funding, Section 404 Permit, Los Angeles County, CA.

Summary: EPA does not object to the proposed project.

EIS No. 20050457, ERP No. F–IBR–K65252–CA, Lake Berryessa Visitor Services Plans, Future Use and Operation, Solano Project Lake Berryessa, Napa County, CA.

Summary: EPA's earlier concerns were addressed in the Final EIS; therefore, EPA does not object to the proposed action.

EIS No. 20050480, ERP No. F–NOA–K39092–CA, Programmatic—Montrose Settlements Restoration Plan, Restoration of Inquired Natural Resources, Channel Islands, Southern California Bight, Baja California Pacific Islands, Orange County, CA.

Summary: EPA does not object to the proposed action.

EIS No. 20050485, ERP No. F–FRC–K05059–CA, Upper North Fork Feather River Project (FERC No. 2105), Issuance of a New License for existing 3517.3 megawatt (MW) Hydroelectric Facility located in North Fork Feather River and Butt Creek, Plumas County, CA.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20050489, ERP No. F–IBR–J39032–00, Operation of Flaming Gorge Dam Colorado River Storage Project, Protection and Assistance in the Recovery of Populations and Designated Critical Habitat of Four Endangered Fishes: Bony Tail, Colorado Pikeminnow, Humpback Chub, and Razorback Sucker, Green River, UT and WY.

Summary: EPA supports the proposed operation and other management activities in the FEIS that are recommended to conserve, protect, and promote the recovery of the populations and designated critical habitat for endangered fish species.

EIS No. 20050492, ERP No. F–AFS–J65454–SD, Bugtown Gulch Mountain Pine Beetle and Fuels Projects, To Implement Multiple Resource Management Actions, Black Hills National Forest, Hell Canyon Ranger District, Custer County, SD.

Summary: EPA continues to have environmental concerns about impacts to water quality from roads construction, run-off and soil erosion, and cumulative impacts from other, large timber projects to vegetation and habitat.

EIS No. 20050494, ERP No. F–NOA–L39063–AK, Amendments to the Alaska Coastal Management Program, Approval, Implementation and Funding, US Army COE 404 Permit, AK.

Summary: EPA continues to have environmental concerns about the

potential adverse impacts to biological, cultural and subsistence resources and subsistence users in coastal communities as a result of the proposed action.

EIS No. 20050513, ERP No. F–AFS–G65098–AR, Ozark–St. Francis National Forests Proposed Revised Land and Resource Management Plan, Implementation, Several Counties, AR.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050497, ERP No. F2–FHW–H40397–MO, Interstate 70 Corridor Improvements, Section of Independent Utility #7, a 40–Mile Portion of the I–70 Corridor from just West of Route 19 (milepost 174) to Lake St. Louis Boulevard (milepost 214) Montgomery, Warren, St. Charles Counties, MO.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050542, ERP No. FS–AFS–L36113–WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Proposing to Amend the Umatilla National Forests Land and Resource Management Plan to Incorporate Management for Canada Lynx, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: January 10, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–358 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6671–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/02/2006 Through 01/06/2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060000, Final EIS, BLM, NM, McGregor Range Resource Management Plan Amendment (RMPA), Implementation, Otero County, NM, *Wait Period Ends:* 02/13/2006, *Contact:* Tom Phillips 505–525–4377.

EIS No. 20060001, Draft EIS, FHW, UT, Syracuse Road 1000 West to 2000 West, Transportation Improvements, Funding and U.S. Army COE Section 404 Permit, Syracuse City, Davis County, UT, *Comment Period Ends:* 02/27/2006, *Contact:* Jeff Berna 801–963–0182.

EIS No. 20060002, Draft EIS, BLM, UT, Coeur d'Alene Resource Management Plan, Implementation, Benewah, Bonner, Boundary, Kootenai and Shoshone Counties, ID, *Comment Period Ends:* 04/13/2006, *Contact:* Scott Pavey, 208–769–5050.

EIS No. 20060003, Final EIS, AFS, 00, Black Hills National Forest Land and Resource Management Plan Phase II Amendment, Proposal to Amend the 1997 Land and Resource Management Plan, Custer, Fall River, Lawrence, Meade and Pennington Counties, SD and Crook and Weston Counties, WY, *Wait Period Ends:* 02/13/2006, *Contact:* Craig Bobzien 605–673–9200.

EIS No. 20060004, Final EIS, FHW, MD, Intercounty Connector (ICC) from I–270 to US1, Funding and U.S. Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD, *Wait Period Ends:* 02/13/2006, *Contact:* Dan Johnson 410–779–7154.

EIS No. 20060005, Final EIS, BLM, WY, Jonah Infill Drilling Project, Propose to Expand Development of Natural Gas Drilling, Sublette County, WY, *Wait Period Ends:* 02/13/2006, *Contact:* Mike Stiewig 307–367–5363.

Amended Notices

EIS No. 20050546, Draft EIS, BLM, ID, Smoky Canyon Mine Panels F & G, Proposed Mine Expansion, Caribou County, ID, *Comment Period Ends:* 03/03/2006, *Contact:* Bill Stout 208–478–6340. Revision of FR Notice Published 12/30/2005: Correction to Comment Period from 02/28/2006 to March 3, 2006.

Dated: January 10, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–328 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8021–4]

National Drinking Water Advisory Council's Working Group on Public Education Requirements of the Lead and Copper Rule Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the third public meeting of the Working Group of the National Drinking Water Advisory Council (NDWAC) on the Public Education Requirements of the Lead and Copper Rule (WGPE). The purpose of this meeting is to provide an opportunity for the WGPE members to continue discussions on the public education requirements of the Lead and Copper Rule.

DATES: The third meeting of the WGPE will be held in Washington, DC, on February 1, 2006, from 8:30 a.m. to 5 p.m. and February 2, 2006, from 8 a.m. to 3 p.m.

ADDRESSES: The WGPE meeting will take place at RESOLVE, Inc., 1255 23rd St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Elizabeth McDermott, Designated Federal Officer, National Drinking Water Advisory Council Working Group on Public Education, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Drinking Water Protection Division (Mail Code 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Elizabeth McDermott *mcdermott.elizabeth@epa.gov* or call 202–564–1603 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background: The charge for the Working Group on the Public Education Requirements of the Lead and Copper Rule (WGPE) is to (1) review the current public education requirements on lead in drinking water to find and define the need for improvements and make recommendations to the full NDWAC accordingly; (2) develop language for communicating the risk of lead in drinking water and a suggested response to the public; and (3) define the delivery means to the public. The NDWAC established a target date of May 2006 to complete these tasks. The WGPE is

comprised of 16 members from drinking water industries, stakeholder organizations, State and local officials, public health officials, environmental organizations, and risk communication experts.

Public Comment: An opportunity for public comment will be provided during the WGPE meeting. Oral statements will be limited to five minutes; it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent by mail to Elizabeth McDermott, Designated Federal Officer for the WGPE, at the mail or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Accommodations: Any person needing special accommodations at this meeting, including wheelchair access, should contact Elizabeth McDermott, Designated Federal Officer for the WGPE, at the number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WGPE meeting.

Dated: January 10, 2006.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E6–327 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8021–5]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting; correction.

SUMMARY: EPA published a document in the **Federal Register** on December 30, 2005 which announced an upcoming meeting of the Ozone Transport Commission (OTC) in Washington, DC. The document contained incorrect meeting dates.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org*; Web site: *http://www.otcair.org.*

Corrections

In the **Federal Register** of December 30, 2005, in FR Document No. E5–8127:

1. On page 77381, in the third column, correct the **DATES** caption to read:

DATES: The meeting will be held on February 22, 2006 starting at 1 p.m. and February 23, 2006 at 9 a.m.

2. On page 77382, in the first column, first paragraph, correct the third sentence to read:

"The purpose of this notice is to announce that the OTC will meet on February 22–23, 2006 at the address noted earlier in this notice."

Dated: January 6, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–320 Filed 1–12–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 77]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The form will be used by customers who originally applied for a multibuyer policy using EIB 92–50. Our customers will be able to submit this form on paper or electronically.

DATES: Written comments should be received on or before March 14, 2006 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Walter Kosciow, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3649.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies, EIB 92–51.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: The form affects entities involved in the export of U.S. goods and Services.

Estimated Annual Respondents: 3,900.

Estimated Time Per Respondent: ½ hour.

Estimated Annual Burden: 1,950.

Frequency of Reporting or Use: 2–3 times per year.

Dated: January 9, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT IMPORT BANK OF THE UNITED STATES
APPLICATION FOR SPECIAL BUYER CREDIT LIMIT (SBCL)
UNDER MULTI-BUYER EXPORT CREDIT INSURANCE POLICIES

App. No. _____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Insured/ Exporter Name:		2. Broker (If none, state "None")	
Policy No.:	State:	Brokerage:	Broker No.:
Attn.:	Tel No.:	Attn.:	Tel No.:
Fax No.:	E-Mail:	Fax No.:	E-Mail:

3. Buyer Name: File No. _____
Address: (Ex-Im Bank Use Only)
City, Country:

4. Guarantor Name (if any): File No. _____
Address: (Ex-Im Bank Use Only)
City, Country:

5. (a) Products ☐ New ☐ Used

(b) Products Description _____

(c) Is each product produced or manufactured in the United States? ☐ Yes ☐ No

(d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of U. S. origin?
☐ Yes ☐ No

(e) Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations) ☐ Yes ☐ No

6. (a) Credit Limit Requested $ _____

(b) Value of orders received $ _____

(c) Down-payment, if any $ _____

(d) Requested SBCL effective date / / (mm/dd/yyyy)

(e) Payment terms requested	(Up to - number of days) Please check applicable box							
Payment Type	Sight	30	60	90	120	180	270	360
Cash Against Documents (CAD)	☐							
Sight Draft Documents Against Payment (SDDP)	☐							
Unconfirmed Irrevocable Letter of Credit (UILC)	☐	☐	☐	☐	☐	☐	☐	☐
Open Account		☐	☐	☐	☐	☐	☐	☐
Sight Draft Documents Against Acceptance (SDDA)		☐	☐	☐	☐	☐	☐	☐
Promissory Note		☐	☐	☐	☐	☐	☐	☐

EIB92-51 (01/06)

7.(a) Your credit experience with this buyer: If none ___ **(Check here for "new buyer")**

Year of first sale to buyer Year 20____

Year of first credit sale (exclude cash and confirmed L/Cs) Year 20____

Total export credit sales to buyer for the last three (3) years $ _____

Highest amount outstanding at any time over last twelve months $ _____

Payment terms extended		(Up to - number of days)				**Please check applicable boxes**		
Payment Type	Sight	30	60	90	120	180	270	360
Cash Against Documents (CAD)	☐							
Sight Draft Documents Against Payment (SDDP)	☐							
Unconfirmed Irrevocable Letter of Credit (UILC)	☐	☐	☐	☐	☐	☐	☐	☐
Open Account		☐	☐	☐	☐	☐	☐	☐
Sight Draft Documents Against Acceptance (SDDA)		☐	☐	☐	☐	☐	☐	☐
Promissory Note		☐	☐	☐	☐	☐	☐	☐

(b) Describe buyer's payment history (check one)

☐ No Prior Experience ☐ Prompt/Discount ☐ 1-30 Days Slow ☐ 31-60 Days Slow ☐ more than 60 days slow

(c) Amount now owing $ _____ , as of _____ (Date).

(d) Amount now more than 60 days past due $ _____ (indicate maturity dates and explanation in an attachment).

(e) Has buyer offered any credit enhancement (security)? ☐ YES ☐ NO If yes, describe:

8. Describe any direct or indirect ownership interest or family relationship which exists between the insured and the buyer/guarantor or between the supplier and the buyer (or guarantor). If none, state "None". _____

9. Are there any extraordinary terms or conditions of sale: ☐ Yes ☐ No. If "Yes," please attach an explanation.

10. CREDIT AND FINANCIAL INFORMATION REQUIREMENTS* for Credit Limit Applications of:

Up to $100,000: Credit Agency Report, **or** a Trade Reference

$100,001- $300,000: Credit Agency Report and a Trade Reference

(The Buyer's audited or signed unaudited financial statements for the last 2 years may be substituted for the trade reference).

$300,001 to $1 million: Credit Agency Report and a Trade Reference and the Buyer's audited or signed unaudited financial statements for the last 2 fiscal years with notes.

over $1 million: Credit Agency Report and 2 Trade References and a Bank Reference and the Buyer's audited or signed unaudited financial statements for the last 3 fiscal years with notes.

* The applicant's credit experience with the Buyer as completed in question 7 may be substituted for a Trade Reference.

If fiscal year end statements are dated more than 9 months from the date of application, the Buyer's interim statements must be submitted.
If the Buyer has a Market Rating you may submit the rating, below, in place of the Credit and Financial Information.
If a Financial Institution (Bank) is the Buyer or Guarantor or if a letter of credit is used no Credit and Financial Information is necessary.

Market Rating: _____ **Source:** _____ **Rating Date:** _____

NOTE: See **Short Term Credit Standards** (EIB99-09) **for Buyers** to determine the likelihood of approval. All references and credit reports must be dated within 6 months of the application and show prompt credit experience for similar amounts and similar terms

EIB92-51 (01/06)

11. CERTIFICATION OF PRODUCT USE AND REPRESENTATIONS:

(a) The applicant hereby certifies to the Export-Import Bank of the United States that, to the best of its knowledge and belief, the products* and services to be exported in the transaction described herein are principally for use as indicated below. (When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and part A should be checked. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please check part B.)

A ☐ By the buyer in the country specified above.

B ☐ If not, name the country where the product will be principally used _____

and by whom _____

- NOTE: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures against them under section 201 of the Trade Act of 1974, see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm#safeguard click on 201. There may not be trade sanctions in force against them. For a list of products and Anti-Dumping or Countervailing Duty sanctions see: www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/antidump_countervailing/index.htm

(b) The applicant certifies that the representations made and the facts stated by it in the application for the special buyer credit limit are true, to the best of its knowledge and belief, and that it has not omitted any material facts. The applicant agrees that the representations and facts shall form the basis of the credit limit if issued and that the truth of such representations and facts contained herein shall be a condition precedent to any liability of Ex-Im thereunder. The applicant understands that this certification is subject to penalties for fraud provided in Article 18, United States Code, Section 1001.

By _____ _____ _____

Signature of Insured/Exporter | Print Name and Title | Date

Note: Please answer all questions and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker to review and send, this application to
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571.
The Ex-Im Bank website is <http://www.exim.gov >

EIB92-51 (01/06)

[FR Doc. 06–298 Filed 1–12–06; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks will hold its first meeting on January 30, 2006 in the FCC's Commission Meeting Room (TW–C305), in Washington, DC.

DATES: January 30, 2006, 10 a.m. to 5 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, Commission Meeting Room (TW–C305).

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Designated Federal Officer of the FCC's Independent Panel at 202–418–7452 or e-mail: *lisa.fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Independent Panel was established to review the impact of Hurricane Katrina on the telecommunications and media infrastructure in the areas affected by the hurricane. Specifically, the Independent Panel will study the impact of Hurricane Katrina on all sectors of the telecommunications and media industries, including public safety communications. The Independent Panel will also review the sufficiency and effectiveness of the recovery effort with respect to this infrastructure. The Independent Panel will then make recommendations to the Federal Communications Commission ("Commission" or "FCC") by June 15, 2006 regarding ways to improve disaster preparedness, network reliability, and communications among first responders such as police, fire fighters, and emergency medical personnel. At its first meeting, the Independent Panel will consider a tentative timetable and the process for completing its task by June 15, 2006 and its committee structure. The Panel will also introduce and receive statements from panel members about the impact of Hurricane Katrina on their company's or industry sector's communications infrastructure as well as issues on which the panel should focus. Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Real Audio access to the meeting will be available at *http://www.fcc.gov.* The public may submit written comments before the meeting to Lisa M. Fowlkes, the FCC's Designated Federal Officer for the Independent Panel by e-mail: *lisa.fowlkes@fcc.gov* or U.S. Postal Service Mail (Lisa M. Fowlkes, Enforcement Bureau, Federal Communications Commission, Room 7–C737, 445 12th Street, SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Additional information about the meeting is available at the FCC's Web site at *http://www.fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–386 Filed 1–12–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[2005–N–10]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2004–05 eighth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before February 27, 2006.

ADDRESSES: Bank members selected for the 2004–05 eighth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at *Fitzgeralde@fhfb.gov.*

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202–408–2874, by electronic mail at *Fitzgeralde@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 et seq., and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support

performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the February 27, 2006 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 27, 2006, each Bank will notify the members in its district that have been selected for the 2004–05 eighth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *http://www.fhfb.gov.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2004–05 eighth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Savings Bank of Danbury	Danbury	Connecticut.
American Eagle Federal Credit Union	East Hartford	Connecticut.
VantisLife Insurance Company	East Hartford	Connecticut.
The Dime Savings Bank of Norwich	Norwich	Connecticut.
Stafford Savings Bank	Stafford Springs	Connecticut.
Sikorsky Financial Credit Union	Stratford	Connecticut.
Torrington Savings Bank	Torrington	Connecticut.
Constitution State Corporate Credit Union, Inc	Wallingford	Connecticut.
Webster Bank	Waterbury	Connecticut.
Maine State Credit Union	Augusta	Maine.
Biddeford Savings Bank	Biddeford	Maine.
Atlantic Regional Federal Credit Union	Brunswick	Maine.
Ste. Croix Regional Federal Credit Union	Lewiston	Maine.
Rainbow Federal Credit Union	Lewiston	Maine.
Evergreen Credit Union	Westbrook	Maine.
The Provident Bank	Amesbury	Massachusetts.
Athol-Clinton Co-operative Bank	Athol	Massachusetts.
The Village Bank	Auburndale	Massachusetts.
Citizens Bank of Massachusetts	Boston	Massachusetts.
Brookline Municipal Credit Union	Brookline	Massachusetts.
Metropolitan Credit Union	Chelsea	Massachusetts.
Pilgrim Co-operative Bank	Cohasset	Massachusetts.
Postal Community Credit Union	East Boston	Massachusetts.
Everett Co-operative Bank	Everett	Massachusetts.
St. Anne's Credit Union of Fall River, Mass	Fall River	Massachusetts.
I. C. Federal Credit Union	Fitchburg	Massachusetts.
Holyoke Credit Union	Holyoke	Massachusetts.
Jeanne D'Arc Credit Union	Lowell	Massachusetts.
Bank Malden	Malden	Massachusetts.
St. Mary's Credit Union	Marlborough	Massachusetts.
Medway Co-operative Bank	Medway	Massachusetts.
Merrimac Savings Bank	Merrimac	Massachusetts.
Millbury National Bank	Millbury	Massachusetts.
Greylock Federal Credit Union	Pittsfield	Massachusetts.
Legacy Banks	Pittsfield	Massachusetts.
Bridgewater Savings Bank	Raynham	Massachusetts.
Winter Hill Bank	Somerville	Massachusetts.
Member Plus Credit Union	Somerville	Massachusetts.
Mt. Washington Co-operative Bank	South Boston	Massachusetts.
MBTA Employees Credit Union	South Boston	Massachusetts.
Wakefield Co-operative Bank	Wakefield	Massachusetts.
Webster Five Cents Savings Bank	Webster	Massachusetts.
Mutual Federal Savings Bank of Plymouth County	Whitman	Massachusetts.
Winchester Savings Bank	Winchester	Massachusetts.
Ledyard National Bank	Hanover	New Hampshire.
Monadnock Community Bank	Peterborough	New Hampshire.
Northeast Credit Union	Portsmouth	New Hampshire.
Woodsville Guaranty Savings Bank	Woodsville	New Hampshire.
Coastway Credit Union	Cranston	Rhode Island.
People's Credit Union	Middleton	Rhode Island.
Pawtucket Credit Union	Pawtucket	Rhode Island.
Opportunities Credit Union	Burlington	Vermont.
Community National Bank	Derby	Vermont.
First National Bank of Orwell	Orwell	Vermont.
Wells River Savings Bank	Wells River	Vermont.

Federal Home Loan Bank of New York—District 2

Summit Federal Savings & Loan Association	Dunellen	New Jersey.
Sterling Bank	Mount Laurel	New Jersey.
Roselle Savings Bank	Roselle	New Jersey.

Greater Community Bank	Totowa	New Jersey.
Sun National Bank	Vineland	New Jersey.
Valley National Bank	Wayne	New Jersey.
Marathon National Bank of New York	Astoria	New York.
Seneca Federal Savings and Loan Association	Baldwinsville	New York.
Ballston Spa National Bank	Ballston Spa	New York.
New York National Bank	Bronx	New York.
The Dime Savings Bank of Williamsburgh	Brooklyn	New York.
Community Bank, National Association	Canton	New York.
North Country Savings Bank	Canton	New York.
Carthage Federal Savings and Loan Association	Carthage	New York.
Lake Shore Savings & Loan Association	Dunkirk	New York.
City National Bank & Trust Company	Gloversville	New York.
North Fork Bank	Melville	New York.
Interaudi Bank	New York	New York.
Ridgewood Savings Bank	New York	New York.
Alliance Bank, NA	Oneida	New York.
The Seneca Falls Savings Bank	Seneca Falls	New York.
Sleepy Hollow Bank	Sleepy Hollow	New York.
Geddes Federal Savings and Loan	Syracuse	New York.
The National Bank of Delaware County	Walton	New York.
Sound Federal Savings	White Plains	New York.
RG Premier Bank of Puerto Rico	Hato Rey	Puerto Rico.
EuroBank	San Juan	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

Chase Manhattan Bank USA, N.A	Newark	Delaware.
Allegiance Bank of North America	Bala Cynwyd	Pennsylvania.
First National Bank of Berwick	Berwick	Pennsylvania.
American Eagle Savings Bank	Boothwyn	Pennsylvania.
Commerce Bank/Harrisburg, N.A	Camp Hill	Pennsylvania.
Croydon Savings Bank	Croydon	Pennsylvania.
FNB Bank, N.A	Danville	Pennsylvania.
Marquette Savings Bank	Erie	Pennsylvania.
First United National Bank	Fryburg	Pennsylvania.
Adams County National Bank	Gettysburg	Pennsylvania.
The First National Bank of Greencastle	Greencastle	Pennsylvania.
Huntingdon Savings Bank	Huntingdon	Pennsylvania.
Huntingdon Valley Bank	Huntingdon Valley	Pennsylvania.
First Commonwealth Bank	Indiana	Pennsylvania.
Abington Bank	Jenkintown	Pennsylvania.
The Merchants National Bank of Kittanning	Kittanning	Pennsylvania.
Fulton Bank	Lancaster	Pennsylvania.
Bank of Lancaster County, N.A	Lancaster	Pennsylvania.
The First National Bank of Lilly	Lilly	Pennsylvania.
The Citizens National Bank	Meyersdale	Pennsylvania.
Milton Savings Bank	Milton	Pennsylvania.
The First National Bank of Newport	Newport	Pennsylvania.
The Northumberland National Bank	Northumberland	Pennsylvania.
First National Bank of Palmerton	Palmerton	Pennsylvania.
United Savings Bank	Philadelphia	Pennsylvania.
Tioga Franklin Savings Bank	Philadelphia	Pennsylvania.
Fidelity Bank PaSb	Pittsburgh	Pennsylvania.
Landmark Community Bank	Pittston	Pennsylvania.
Wilmington Trust of Pennsylvania	Villanova	Pennsylvania.
West Milton State Bank	West Milton	Pennsylvania.
Citizens National Bank of Berkeley Springs	Berkeley Springs	West Virginia.
Bank of Charles Town	Charles Town	West Virginia.
Davis Trust Company	Elkins	West Virginia.
Guaranty Bank & Trust Company	Huntington	West Virginia.
Summit Community Bank	Moorefield	West Virginia.
Capon Valley Bank	Wardensville	West Virginia.
First National Bank in West Union	West Union	West Virginia.
The Citizens Bank of Weston, Inc	Weston	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

First National Bank of Central Alabama	Aliceville	Alabama.
The First National Bank of Atmore	Atmore	Alabama.
The Bank	Birmingham	Alabama.
Regions Bank	Birmingham	Alabama.
Alabama Central Credit Union	Birmingham	Alabama.
Farmers and Merchants Bank	Centre	Alabama.
Merchants & Farmers Bank of Greene County	Eutaw	Alabama.
First Lowndes Bank	Fort Deposit	Alabama.

First Metro Bank	Muscle Shoals	Alabama.
Farmers and Merchants Bank	Piedmont	Alabama.
West Alabama Bank & Trust	Reform	Alabama.
Bank Independent	Sheffield	Alabama.
First Southern National Bank	Stevenson	Alabama.
Turnberry Bank	Aventura	Florida.
Horizon Bank	Bradenton	Florida.
Coast Bank of Florida	Bradenton	Florida.
Riverside Bank of the Gulf Coast	Cape Coral	Florida.
Gulf State Community Bank	Carrabelle	Florida.
BAC Florida Bank	Coral Gables	Florida.
EuroBank	Coral Gables	Florida.
Englewood Bank	Englewood	Florida.
First Community Bank of Southwest Florida	Fort Myers	Florida.
Beach Community Bank	Fort Walton Beach	Florida.
First Bank of Indiantown	Indiantown	Florida.
Jacksonville Firemen's Credit Union	Jacksonville	Florida.
The Jacksonville Bank	Jacksonville	Florida.
Heritage Bank of Florida	Lutz	Florida.
Executive National Bank	Miami	Florida.
Sunshine State FS&L Association	Plant City	Florida.
Pilot Bank	Tampa	Florida.
Palm Beach County Bank	West Palm Beach	Florida.
Enterprise Banking Company	Abbeville	Georgia.
Wheeler County State Bank	Alamo	Georgia.
First National Bank of South Georgia, N.A	Albany	Georgia.
Sumter Bank & Trust Company	Americus	Georgia.
Community National Bank	Ashburn	Georgia.
Colony Bank Ashburn	Ashburn	Georgia.
The National Bank of Georgia	Athens	Georgia.
Capitol City Bank & Trust Company	Atlanta	Georgia.
Atlantic National Bank	Brunswick	Georgia.
Peoples Bank & Trust	Buford	Georgia.
United National Bank	Cairo	Georgia.
Bartow County Bank	Cartersville	Georgia.
PeoplesSouth Bank	Colquitt	Georgia.
Columbus Bank and Trust Company	Columbus	Georgia.
First National Bank	Covington	Georgia.
Bank of Dawson	Dawson	Georgia.
Bank of Terrell	Dawson	Georgia.
Horizon Bank	Decatur	Georgia.
Farmers State Bank	Dublin	Georgia.
Heritage Bank	Jonesboro	Georgia.
First Capital Bank	Norcross	Georgia.
Waycross Bank & Trust	Waycross	Georgia.
UnitedBank	Zebulon	Georgia.
The Harbor Bank of Maryland	Baltimore	Maryland.
Mercantile Eastern Shore Bank	Chestertown	Maryland.
County First Bank	La Plata	Maryland.
Bank of Ocean City	Ocean City	Maryland.
Farmers and Merchants Bank	Upperco	Maryland.
Old Line Bank	Waldorf	Maryland.
Westminster Union Bank	Westminster	Maryland.
Bank of America Georgia, NA	Charlotte	North Carolina.
New Century Bank	Dunn	North Carolina.
Four Oaks Bank & Trust Company	Four Oaks	North Carolina.
Alamance Bank	Graham	North Carolina.
Sterling South Bank & Trust Company	Greensboro	North Carolina.
BB & T of SC	Lumberton	North Carolina.
Bank of the Carolinas	Mocksville	North Carolina.
Citizens South Bank	Gastonia	North Carolina.
The Bank of Currituck	Moyock	North Carolina.
First-Citizens Bank & Trust Company	Raleigh	North Carolina.
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	North Carolina.
KS Bank, Incorporated	Smithfield	North Carolina.
Jackson Savings Bank, S.S.B	Sylva	North Carolina.
Tarboro Savings Bank, SSB	Tarboro	North Carolina.
Security Federal Bank	Aiken	South Carolina.
Bank of Anderson	Anderson	South Carolina.
Lowcountry National Bank	Beaufort	South Carolina.
CapitalBank	Greenwood	South Carolina.
Palmetto State Bank	Hampton	South Carolina.
Beach First National Bank	Myrtle Beach	South Carolina.
First National Bank of the South	Spartanburg	South Carolina.
The First Bank and Trust Company	Abingdon	Virginia.
Highlands Union Bank	Abingdon	Virginia.

Countrywide Bank, N.A	Alexandria	Virginia.
First National Bank of Altavista	Altavista	Virginia.
E*Trade Bank	Arlington	Virginia.
Bank of Clarke County	Berryville	Virginia.
The Bank of Floyd	Floyd	Virginia.
TruPoint Bank	Grundy	Virginia.
Rockingham Heritage Bank	Harrisonburg	Virginia.
The Bank of Marion	Marion	Virginia.
Bank of Essex	Tappahannock	Virginia.
Resource Bank	Virginia Beach	Virginia.
The Fauquier Bank	Warrenton	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Town Square Bank, Inc	Ashland	Kentucky.
Auburn Banking Company	Auburn	Kentucky.
Peoples Exchange Bank	Beattyville	Kentucky.
Appalachian Peoples Federal Credit Union	Berea	Kentucky.
Farmers State Bank	Booneville	Kentucky.
Citizens First Bank, Inc	Bowling Green	Kentucky.
American Bank & Trust Company, Inc	Bowling Green	Kentucky.
The First National Bank of Brooksville	Brooksville	Kentucky.
Brownsville Deposit Bank	Brownsville	Kentucky.
Heritage Bank, Inc	Burlington	Kentucky.
Bank of Caneyville	Caneyville	Kentucky.
Bank of Corbin, Inc	Corbin	Kentucky.
Bank of Ohio County	Dundee	Kentucky.
Elkton Bank and Trust Company	Elkton	Kentucky.
Farmers Deposit Bank	Eminence	Kentucky.
The Bank of Kentucky	Florence	Kentucky.
First Federal Savings Bank of Frankfort	Frankfort	Kentucky.
First National Bank of Northern Kentucky	Ft. Mitchell	Kentucky.
The First National Bank of Grayson	Grayson	Kentucky.
The Commercial Bank of Grayson	Grayson	Kentucky.
Ohio Valley National Bank	Henderson	Kentucky.
Hyden Citizens Bank	Hyden	Kentucky.
Citizens Guaranty Bank	Irvine	Kentucky.
Citizens Bank & Trust Company of Jackson	Jackson	Kentucky.
The First National Bank of Jackson	Jackson	Kentucky.
Peoples Bank	Lebanon	Kentucky.
Lewisburg Banking Company	Lewisburg	Kentucky.
University of Kentucky Federal Credit Union	Lexington	Kentucky.
First National Bank and Trust	London	Kentucky.
Stock Yards Bank & Trust Company	Louisville	Kentucky.
The Peoples Bank	Marion	Kentucky.
Security Bank & Trust Company	Maysville	Kentucky.
The Citizens Bank	Morehead	Kentucky.
Citizens Bank of Northern Kentucky Inc	Newport	Kentucky.
First Farmers Bank & Trust Company	Owenton	Kentucky.
The Paducah Bank & Trust Company	Paducah	Kentucky.
Kentucky Bank	Paris	Kentucky.
Salyersville National Bank	Salyersville	Kentucky.
Citizens Union Bank of Shelbyville	Shelbyville	Kentucky.
Somerset National Bank	Somerset	Kentucky.
PBK Bank, Inc	Stanford	Kentucky.
Bank of the Mountains	West Liberty	Kentucky.
Winchester Federal Savings Bank	Winchester	Kentucky.
North Akron Savings Bank	Akron	Ohio.
The Andover Bank	Andover	Ohio.
Sutton Bank	Attica	Ohio.
United Bank, N.A	Bucyrus	Ohio.
Farmers National Bank	Canfield	Ohio.
The Cincinnatus Savings & Loan Company	Cheviot	Ohio.
Foundation Bank	Cincinnati	Ohio.
The Union Bank Company	Columbus Grove	Ohio.
Heartland Federal Credit Union	Dayton	Ohio.
The State Bank and Trust Company	Defiance	Ohio.
Fremont Federal Credit Union	Fremont	Ohio.
The Ohio Valley Bank Company	Gallipolis	Ohio.
The Sycamore National Bank	Groesbeck	Ohio.
The Harrison Building and Loan Assoc	Harrison	Ohio.
Oak Hill Banks	Jackson	Ohio.
Lebanon Citizens National Bank	Lebanon	Ohio.
Buckeye Community Bank	Lorain	Ohio.
The Lorain National Bank	Lorain	Ohio.
The Ohio State Bank	Marion	Ohio.

Minster Bank	Minster	Ohio.
The Mount Victory State Bank	Mount Victory	Ohio.
First National Bank of New Bremen	New Bremen	Ohio.
Farmers State Bank	New Madison	Ohio.
Portage Community Bank	Ravenna	Ohio.
The Richwood Banking Company	Richwood	Ohio.
Sherwood State Bank	Sherwood	Ohio.
The First National Bank of Sycamore	Sycamore	Ohio.
First Bank of Ohio	Tiffin	Ohio.
Great Lakes Credit Union, Inc	Toledo	Ohio.
The Citizens National Bank of Urbana	Urbana	Ohio.
The National Bank and Trust Company	Wilmington	Ohio.
Woodsfield Savings Bank	Woodsfield	Ohio.
Century National Bank	Zanesville	Ohio.
Community B&TC of Cheatham Ctny	Ashland City	Tennessee.
Citizens Bank & Trust Company	Atwood	Tennessee.
First South Bank	Bolivar	Tennessee.
Cornerstone Community Bank	Chattanooga	Tennessee.
Southern Heritage Bank	Cleveland	Tennessee.
The Community Bank of East Tenn	Clinton	Tennessee.
First Alliance Bank	Cordova	Tennessee.
Tristar Bank	Dickson	Tennessee.
Fifth Third Bank	Franklin	Tennessee.
Tennessee Commerce Bank	Franklin	Tennessee.
Commercial Bank	Harrogate	Tennessee.
Dupont Community Credit Union	Hixon	Tennessee.
The First National Bank of LaFollette	LaFollette	Tennessee.
Bank of Perry County	Lobelville	Tennessee.
Bank of Mason	Mason	Tennessee.
McKenzie Banking Company	McKenzie	Tennessee.
Security Federal Savings Bank	McMinnville	Tennessee.
Tri-State Bank of Memphis	Memphis	Tennessee.
Financial Federal Savings Bank	Memphis	Tennessee.
First Tennessee Bank NA	Memphis	Tennessee.
Cavalry Banking	Murfreesboro	Tennessee.
Pinnacle National Bank	Nashville	Tennessee.
Community Trust & Banking Company	Ooletewah	Tennessee.
Bank of Ripley	Ripley	Tennessee.
The Citizens Bank of East Tennessee	Rogersville	Tennessee.
First Community Bank of East Tennessee	Rogersville	Tennessee.
The Hardin County Bank	Savannah	Tennessee.
Peoples State Bank of Commerce	Trenton	Tennessee.
First National Bank of Tullahoma	Tullahoma	Tennessee.
The Traders National Bank	Tullahoma	Tennessee.
First State Bank	Union City	Tennessee.
Wayne County Bank	Waynesboro	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Company	Attica	Indiana.
Hoosier Hills Credit Union	Bedford	Indiana.
Bloomfield State Bank	Bloomfield	Indiana.
Indiana University Employees FCU	Bloomington	Indiana.
Wayne Bank and Trust Company	Cambridge City	Indiana.
Heritage Community Bank	Columbus	Indiana.
Chiphone Federal Credit Union	Elkhart	Indiana.
Fire Police City County Federal Credit Union	Fort Wayne	Indiana.
MidWest America Federal Credit Union	Fort Wayne	Indiana.
Alliance Bank	Francesville	Indiana.
Friendship State Bank	Friendship	Indiana.
Sand Ridge Bank	Highland	Indiana.
German American Bank	Jasper	Indiana.
Lafayette Bank & Trust	Lafayette	Indiana.
Union County National Bank	Liberty	Indiana.
Lynnville National Bank	Lynnville	Indiana.
Citizens State Bank	New Castle	Indiana.
Notre Dame Federal Credit Union	Notre Dame	Indiana.
State Bank of Oxford	Oxford	Indiana.
First Federal Savings Bank	Rochester	Indiana.
1st Source Bank	South Bend	Indiana.
First National Bank, Valparaiso	Valparaiso	Indiana.
Centre Bank	Veedersburg	Indiana.
The Merchants Bank & Trust Company	West Harrison	Indiana.
Centier Bank	Whiting	Indiana.
Chemical Bank Shoreline	Benton Harbor	Michigan.
State Bank of Caledonia	Caledonia	Michigan.

Chelsea State Bank	Chelsea	Michigan.
Century Bank and Trust	Coldwater	Michigan.
Southern Michigan Bank and Trust	Coldwater	Michigan.
First State Bank	Decatur	Michigan.
Baybank	Gladstone	Michigan.
Founders Trust Personal Bank	Grand Rapids	Michigan.
West Michigan Community Bank	Hudsonville	Michigan.
The Miners State Bank of Iron River	Iron River	Michigan.
Peninsula Bank	Ishpeming	Michigan.
Kent Commerce Bank	Kentwood	Michigan.
West Shore Bank	Ludington	Michigan.
Dart Bank	Mason	Michigan.
Citizens State Bank	New Baltimore	Michigan.
Oxford Bank	Oxford	Michigan.
The Bank of Northern Michigan	Petoskey	Michigan.
Community Plus Savings Bank	Rochester Hills	Michigan.
Independent Bank—West Michigan	Rockford	Michigan.
Old Mission Bank	Sault Saint Marie	Michigan.
FirstBank—St. Johns	St. Johns	Michigan.
Warren Bank	Warren	Michigan.

Federal Home Loan Bank of Chicago—District 7

State Bank of Augusta	Augusta	Illinois.
Benchmark Bank	Aurora	Illinois.
Old Second National Bank	Aurora	Illinois.
Tompkins State Bank	Avon	Illinois.
Beardstown Savings s.b	Beardstown	Illinois.
Citizens Bank—Illinois, National Association	Berwyn	Illinois.
Bloomingdale Bank & Trust	Bloomington	Illinois.
Great Lakes Bank, National Association	Blue Island	Illinois.
The Bank of Lawrence County	Bridgeport	Illinois.
Brimfield Bank	Brimfield	Illinois.
Marine Trust Company of Carthage	Carthage	Illinois.
Chester National Bank	Chester	Illinois.
Buena Vista National Bank	Chester	Illinois.
Lakeside Bank	Chicago	Illinois.
Pullman Bank and Trust Company	Chicago	Illinois.
Pacific Global Bank	Chicago	Illinois.
The Northern Trust Company	Chicago	Illinois.
Cosmopolitan Bank and Trust	Chicago	Illinois.
State Bank of Chrisman	Chrisman	Illinois.
American Savings Bank of Danville	Danville	Illinois.
Republic Bank of Chicago	Darien	Illinois.
Citizens Community Bank of Decatur, IL	Decatur	Illinois.
The First National Bank of Dieterich	Dieterich	Illinois.
First State Bank of Dix	Dix	Illinois.
East Dubuque Savings Bank	East Dubuque	Illinois.
Citizens Bank	Edinburg	Illinois.
The Bank of Edwardsville	Edwardsville	Illinois.
C.P. Burnett & Sons, Bankers	Eldorado	Illinois.
First State Bank of Eldorado	Eldorado	Illinois.
Elgin State Bank	Elgin	Illinois.
Advantage National Bank	Elk Grove Village	Illinois.
First Bank & Trust	Evanston	Illinois.
Fairfield National Bank	Fairfield	Illinois.
Flora Savings Bank	Flora	Illinois.
The Farmers and Mechanics Bank	Galesburg	Illinois.
Glasford State Bank	Glasford	Illinois.
Heritage Community Bank	Glenwood	Illinois.
The Bank of Godfrey	Godfrey	Illinois.
Golden State Bank	Golden	Illinois.
Goodfield State Bank	Goodfield	Illinois.
Farmers National Bank of Griggsville	Griggsville	Illinois.
Clay County State Bank	Louisville	Illinois.
Peoples State Bank of Mansfield	Mansfield	Illinois.
HomeStar Bank	Manteno	Illinois.
First Federal Savings Bank of Mascoutah	Mascoutah	Illinois.
First Federal Savings & Loan Assn of Mattoon	Mattoon	Illinois.
Morton Community Bank	Morton	Illinois.
Mt. Morris Savings	Mt. Morris	Illinois.
The First National Bank of Mt. Pulaski	Mt. Pulaski	Illinois.
Oak Brook Bank	Oak Brook	Illinois.
First Community Bank, N.A	Olney	Illinois.
TrustBank	Olney	Illinois.
First Federal Savings Bank	Ottawa	Illinois.

First Bank and Trust, s.b	Paris	Illinois.
Corn Belt Bank & Trust Company	Pittsfield	Illinois.
Bank of Rantoul	Rantoul	Illinois.
The First National Bank & TC of Rochelle	Rochelle	Illinois.
Northwest Bank of Rockford	Rockford	Illinois.
Savanna-Thomson State Bank	Savanna	Illinois.
1st Community Bank	Sherrard	Illinois.
Independent Bankers' Bank	Springfield	Illinois.
Sterling Federal Bank	Sterling	Illinois.
Streator Home Building and Loan Association	Streator	Illinois.
First National Bank of Sullivan	Sullivan	Illinois.
Tempo Bank, A FSB	Trenton	Illinois.
Heritage Bank of Central Illinois	Trivoli	Illinois.
Iroquois Federal Savings and Loan Association	Watseka	Illinois.
Capstone Bank	Watseka	Illinois.
Bank of Waukegan	Waukegan	Illinois.
Wemple State Bank	Waverly	Illinois.
State Bank of Illinois	West Chicago	Illinois.
RidgeStone Bank	Brookfield	Wisconsin.
First Banking Center	Burlington	Wisconsin.
Cambridge State Bank	Cambridge	Wisconsin.
Sterling Bank	Cameron	Wisconsin.
Community Bank of Cameron	Cameron	Wisconsin.
Community Bank of Central Wisconsin	Colby	Wisconsin.
DMB Community Bank	DeForest	Wisconsin.
Community Bank Delavan	Delavan	Wisconsin.
Royal Credit Union	Eau Claire	Wisconsin.
Charter Bank Eau Claire	Eau Claire	Wisconsin.
Grafton State Bank	Grafton	Wisconsin.
Grand Marsh State Bank	Grand Marsh	Wisconsin.
Hartford Savings Bank	Hartford	Wisconsin.
Farmers State Bank	Hillsboro	Wisconsin.
Citizens State Bank	Hudson	Wisconsin.
F&M Bank Wisconsin	Kaukauna	Wisconsin.
The Bank of Kaukauna	Kaukauna	Wisconsin.
First National Bank in Manitowoc	Manitowoc	Wisconsin.
Investors Community Bank	Manitowoc	Wisconsin.
Farmers & Merchants Bank and Trust	Marinette	Wisconsin.
The Stephenson National Bank & Trust	Marinette	Wisconsin.
Marshfield Savings Bank	Marshfield	Wisconsin.
Mayville Savings Bank	Mayville	Wisconsin.
McFarland State Bank	McFarland	Wisconsin.
Lincoln County Bank	Merrill	Wisconsin.
North Milwaukee State Bank	Milwaukee	Wisconsin.
Monona State Bank	Monona	Wisconsin.
First National Bank of Niagara	Niagara	Wisconsin.
Oostburg State Bank	Oostburg	Wisconsin.
United Bank	Osseo	Wisconsin.
Pigeon Falls State Bank	Pigeon Falls	Wisconsin.
Port Washington State Bank	Port Washington	Wisconsin.
Bank of Poynette	Poynette	Wisconsin.
Peoples State Bank	Prairie du Chien	Wisconsin.
Bank of Prairie du Sac	Prairie du Sac	Wisconsin.
Community State Bank of Prentice	Prentice	Wisconsin.
Johnson Bank	Racine	Wisconsin.
Northwoods State Bank	Rhinelander	Wisconsin.
Community First Bank	Rosholt	Wisconsin.
First National Bank of Stoughton	Stoughton	Wisconsin.
Stratford State Bank	Stratford	Wisconsin.
Bank of Turtle Lake	Turtle Lake	Wisconsin.
First National Bank	Waupaca	Wisconsin.
Peoples State Bank	Wausau	Wisconsin.
State Bank of Withee	Withee	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

First National Bank	Akron	Iowa.
First Iowa State Bank	Albia	Iowa.
Iowa State Bank	Algona	Iowa.
Farmers State Bank	Algona	Iowa.
Ames Community Bank	Ames	Iowa.
Rolling Hills Bank & Trust	Atlantic	Iowa.
Benton County State Bank	Blairstown	Iowa.
First State Bank	Britt	Iowa.
Patriot Bank	Brooklyn	Iowa.
Farmers & Merchant Bank & Trust	Burlington	Iowa.

Carroll County State Bank	Carroll	Iowa.
Tri-County Bank & Trust	Cascade	Iowa.
Center Point Bank & Trust Company	Center Point	Iowa.
Iowa State Bank	Clarksville	Iowa.
Citizens First Bank	Clinton	Iowa.
Clinton National Bank	Clinton	Iowa.
Great Western Bank	Clive	Iowa.
First State Bank of Colfax	Colfax	Iowa.
Frontier Savings Bank	Council Bluffs	Iowa.
Northwest Bank and Trust Company	Davenport	Iowa.
Viking State Bank & Trust	Decorah	Iowa.
Defiance State Bank	Defiance	Iowa.
Bankers Trust Company, N.A	Des Moines	Iowa.
First Central State Bank	DeWitt	Iowa.
Du Trac Community Credit Union	Dubuque	Iowa.
American Trust and Savings Bank	Dubuque	Iowa.
Emmet County State Bank	Estherville	Iowa.
First Security State Bank	Evansdale	Iowa.
Manufacturers Bank & Trust Company	Forest City	Iowa.
Garnavillo Savings Bank	Garnavillo	Iowa.
George State Bank	George	Iowa.
Union State Bank	Greenfield	Iowa.
Heritage Bank, N.A	Holstein	Iowa.
United Bank of Iowa	Ida Grove	Iowa.
University of Iowa Community Credit Union	Iowa City	Iowa.
Iowa State Bank & Trust Company	Iowa City	Iowa.
Community Choice Credit Union	Johnston	Iowa.
Primebank	Le Mars	Iowa.
Luana Savings Bank	Luana	Iowa.
Central State Bank	Muscatine	Iowa.
Iowa State Bank	Orange City	Iowa.
MidwestOne Bank & Trust	Oskaloosa	Iowa.
Central Valley Bank	Ottumwa	Iowa.
Pioneer Bank	Sergeant Bluff	Iowa.
Bank Iowa	Shenandoah	Iowa.
Central Bank	Storm Lake	Iowa.
First State Bank	Stuart	Iowa.
American Savings Bank	Tripoli	Iowa.
West Bank	West Des Moines	Iowa.
Farmers Trust & Savings Bank	Williamsburg	Iowa.
Adrian State Bank	Adrian	Minnesota.
Security State Bank	Aitkin	Minnesota.
Annandale State Bank	Annandale	Minnesota.
First National Bank	Bagley	Minnesota.
First National Bank	Battle Lake	Minnesota.
State Bank of Belle Plaine	Belle Plaine	Minnesota.
Security Bank USA	Bemidji	Minnesota.
First Federal Bank	Bemidji	Minnesota.
Concorde Bank	Blomkest	Minnesota.
Bonanza Valley State Bank	Brooten	Minnesota.
CenBank	Buffalo Lake	Minnesota.
Root River State Bank	Chatfield	Minnesota.
Community Bank of the Red River Valley	East Grand Forks	Minnesota.
First National Bank of Elk River	Elk River	Minnesota.
The Bank of Elk River	Elk River	Minnesota.
Boundary Waters Bank	Ely	Minnesota.
Elysian Bank	Elysian	Minnesota.
Anchor Bank Farmington, N.A	Farmington	Minnesota.
Security State Bank of Fergus Falls	Fergus Falls	Minnesota.
Northview Bank	Finlayson	Minnesota.
State Bank of Gibbon	Gibbon	Minnesota.
Grand Marais State Bank	Grand Marais	Minnesota.
Grand Rapids State Bank	Grand Rapids	Minnesota.
State Bank of Hawley	Hawley	Minnesota.
First National Bank	Hawley	Minnesota.
1st National Bank of Herman	Herman	Minnesota.
Security State Bank of Hibbing	Hibbing	Minnesota.
Stearns Bank Holdingford National Association	Holdingford	Minnesota.
American Alliance Bank	Lake City	Minnesota.
Farmers State Bank of Madelia, Inc	Madelia	Minnesota.
Pioneer Bank	Mapleton	Minnesota.
State Bank of McGregor	McGregor	Minnesota.
Excel Bank Minnesota	Minneapolis	Minnesota.
Kanabec State Bank	Mora	Minnesota.
Alliance Bank	New Ulm	Minnesota.
Farmers and Merchants State Bk of NY Mills, Inc	New York Mills	Minnesota.

Valley Bank	North Mankato	Minnesota.
Woodlands National Bank	Onamia	Minnesota.
HomeTown Bank	Redwood Falls	Minnesota.
Eastwood Bank	Rochester	Minnesota.
First National Bank of the North	Sandstone	Minnesota.
First National Bank of Sauk Centre	Sauk Centre	Minnesota.
Stearns Bank N.A	St. Cloud	Minnesota.
The Lake Bank N.A	Two Harbors	Minnesota.
Stearns Bank of Upsala National Association	Upsala	Minnesota.
Mid-Central Federal Savings Bank	Wadena	Minnesota.
First National Bank of Waseca	Waseca	Minnesota.
Mainstreet Bank	Ashland	Missouri.
United Security Bank	Auxvasse	Missouri.
Bank 10	Belton	Missouri.
Bank of Belton	Belton	Missouri.
County Bank	Brunswick	Missouri.
Farmers State Bank	Cameron	Missouri.
Hometown Bank, N.A	Carthage	Missouri.
First State Bank and Trust Company, Inc	Caruthersville	Missouri.
Citizens Bank of Charleston	Charleston	Missouri.
Citizens Bank and Trust Company	Chillicothe	Missouri.
Commerce Bank, N.A	Clayton	Missouri.
First National Bank of Clinton	Clinton	Missouri.
Community Bank of El Dorado Springs	El Dorado Springs	Missouri.
First Bank of Missouri	Gladstone	Missouri.
Bank of Holden	Holden	Missouri.
Hume Bank	Hume	Missouri.
Home Savings Bank	Jefferson City	Missouri.
First State Bank of Joplin	Joplin	Missouri.
NorthStar Bank, National Association	Kansas City	Missouri.
Bank of Lee's Summit	Lee's Summit	Missouri.
The Farmers Bank of Lincoln	Lincoln	Missouri.
First National Bank of Mt. Vernon	Mt. Vernon	Missouri.
Community Bank & Trust	Neosho	Missouri.
Citizens Bank	New Haven	Missouri.
Bank Star	Pacific	Missouri.
The Paris National Bank	Paris	Missouri.
Bank Star of the LeadBelt	Park Hills	Missouri.
Unico Bank	Potosi	Missouri.
Phelps County Bank	Rolla	Missouri.
Systematic Savings and Loan Association	Springfield	Missouri.
Farmers & Merchants Bank	St. Clair	Missouri.
Heartland Bank	St. Louis	Missouri.
Osage Valley Bank	Warsaw	Missouri.
McIntosh County Bank	Ashley	North Dakota.
First Security Bank-West	Beulah	North Dakota.
Dakota Western Bank	Bowman	North Dakota.
First State Bank	Buxton	North Dakota.
United Valley Bank	Cavalier	North Dakota.
Western State Bank	Devils Lake	North Dakota.
Union State Bank	Hazen	North Dakota.
Commercial Bank of Mott	Mott	North Dakota.
First National Bank & Trust Company of Williston	Williston	North Dakota.
Citizens State Bank	Arlington	South Dakota.
First State Bank	Armour	South Dakota.
Deuel County National Bank	Clear Lake	South Dakota.
Langford State Bank	Langford	South Dakota.
Sunrise Bank Dakota	Onida	South Dakota.

Federal Home Loan Bank of Dallas—District 9

The First National Bank	Ashdown	Arkansas.
First Western Bank	Booneville	Arkansas.
Signature Bank of Arkansas	Camden	Arkansas.
Chambers Bank	Danville	Arkansas.
Decatur State Bank	Decatur	Arkansas.
First State Bank of DeQueen	DeQueen	Arkansas.
Timberland Bank	El Dorado	Arkansas.
The Bank of Fayetteville, N.A	Fayetteville	Arkansas.
First Service Bank	Greenbrier	Arkansas.
Farmers Bank	Hamburg	Arkansas.
Heritage Bank	Jonesboro	Arkansas.
Eagle Bank & Trust	Little Rock	Arkansas.
First Security Bank of Mountain Home	Mountain Home	Arkansas.
Parkway Bank	Portland	Arkansas.
First State Bank	Russellville	Arkansas.

The First National Bank of Wynne	Wynne	Arkansas.
Peoples Bank of Louisiana	Amite	Louisiana.
Landmark Bank	Clinton	Louisiana.
Caldwell Bank and Trust Company	Columbia	Louisiana.
Resource Bank	Covington	Louisiana.
Tri-Parish Bank	Eunice	Louisiana.
Gibsland Bank & Trust Company	Gibsland	Louisiana.
Bank of Jena	Jena	Louisiana.
MidSouth Bank, N.A	Lafayette	Louisiana.
South Lafourche Bank & Trust Company	Larose	Louisiana.
Merchants & Farmers Bank & Trust Company	Leesville	Louisiana.
Omni Bank	Metairie	Louisiana.
Bank of Montgomery	Montgomery	Louisiana.
Community First Bank	New Iberia	Louisiana.
Gulf Coast Bank & Trust Company	New Orleans	Louisiana.
United Bank & Trust Company	New Orleans	Louisiana.
St. Landry Homestead Federal Savings Bank	Opelousas	Louisiana.
Community Bank	Raceland	Louisiana.
First American Bank and Trust Company	Vacherie	Louisiana.
First Federal Savings and Loan Association	Aberdeen	Mississippi.
Farmers and Merchants Bank	Baldwyn	Mississippi.
Copiah Bank, N.A	Hazlehurst	Mississippi.
Planters Bank & Trust Company	Indianola	Mississippi.
First American National Bank	Iuka	Mississippi.
Citizens Bank & Trust Company	Marks	Mississippi.
Pike County National Bank	McComb	Mississippi.
United Mississippi Bank	Natchez	Mississippi.
MS Telco Federal Credit Union	Pearl	Mississippi.
Western Bank Alamogordo	Alamogordo	New Mexico.
Bank of Albuquerque N.A	Albuquerque	New Mexico.
Western Bank	Artesia	New Mexico.
Western Commerce Bank	Carlsbad	New Mexico.
Citizens Bank	Farmington	New Mexico.
Los Alamos National Bank	Los Alamos	New Mexico.
Portales National Bank	Portales	New Mexico.
Citizens Bank, N.A	Abilene	Texas.
Anahuac National Bank	Anahuac	Texas.
First Bank	Azle	Texas.
First National Bank of Baird	Baird	Texas.
The First National Bank of Ballinger	Ballinger	Texas.
First National Bank Mid-Cities	Bedford	Texas.
Blanco National Bank	Blanco	Texas.
Legend Bank, N.A	Bowie	Texas.
The Commercial National Bank of Brady	Brady	Texas.
First State Bank	Bremond	Texas.
First National Bank in Bronte	Bronte	Texas.
First Bank	Burkburnett	Texas.
First State Bank & Trust Company	Carthage	Texas.
Corsicana National Bank & Trust	Corsicana	Texas.
Stockmens National Bank	Cotulla	Texas.
State Bank of Texas	Dallas	Texas.
Signature Bank	Dallas	Texas.
Gateway National Bank	Dallas	Texas.
Pavillion Bank	Dallas	Texas.
Bank of Texas, NA	Dallas	Texas.
Amistad Bank	Del Rio	Texas.
Northstar Bank of Texas	Denton	Texas.
First Bank & Trust East Texas	Diboll	Texas.
The First National Bank of Eagle Lake	Eagle Lake	Texas.
NewFirst National Bank	El Campo	Texas.
The First National Bank of Emory	Emory	Texas.
Enloe State Bank	Enloe	Texas.
Greater South Texas Bank, FSB	Falfurrias	Texas.
Pecos County State Bank	Fort Stockton	Texas.
Summit Bank, N.A	Fort Worth	Texas.
Security State Bank and Trust	Fredericksburg	Texas.
First State Bank	Gainesville	Texas.
Moody National Bank	Galveston	Texas.
First National Bank	George West	Texas.
First National Bank of Giddings	Giddings	Texas.
Mills County State Bank	Goldthwaite	Texas.
First State Bank	Graham	Texas.
Farmers State Bank	Groesbeck	Texas.
United Community Bank, N.A	Highland Village	Texas.
The Hondo National Bank	Hondo	Texas.
Preferred Bank, FSB	Houston	Texas.

Sterling Bank	Houston	Texas.
North Hudson Bank	Houston	Texas.
Huntington State Bank	Huntington	Texas.
State National Bank of Texas	Iowa Park	Texas.
TIB—The Independent BankersBank	Irving	Texas.
Jacksboro National Bank	Jacksboro	Texas.
Texas National Bank	Jacksonville	Texas.
Worth National Bank	Lake Worth	Texas.
South Texas National Bank of Laredo	Laredo	Texas.
First Liberty National Bank	Liberty	Texas.
Independent Bank	Manor	Texas.
Bank of Commerce	McLean	Texas.
USAA Federal Savings Bank	San Antonio	Texas.
Sanderson State Bank	Sanderson	Texas.
First Bank of Snook	Snook	Texas.
First National Bank of Trenton	Trenton	Texas.
National American Bank	Uvalde	Texas.
MyLubbockBank	Van Horn	Texas.
Central National Bank	Waco	Texas.
Wallis State Bank	Wallis	Texas.

Federal Home Loan Bank of Topeka—District 10

Colonial Bank	Aurora	Colorado.
FirstBank of Boulder	Boulder	Colorado.
FirstBank of Breckenridge	Breckenridge	Colorado.
Coiz Bank, N.A	Denver	Colorado.
First National Bank of Estes Park	Estes Park	Colorado.
Centennial Bank of the West	Fort Collins	Colorado.
FirstBank of Northern Colorado	Fort Collins	Colorado.
First National Bank—Colorado	Fowler	Colorado.
Union Colony Bank	Greeley	Colorado.
FirstBank of Tech Center	Greenwood Village	Colorado.
The Gunnison Bank and Trust Company	Gunnison	Colorado.
Red Rocks Federal Credit Union	Highlands Ranch	Colorado.
First State Bank	Idaho Springs	Colorado.
Valley State Bank	Lamar	Colorado.
Heritage Bank	Louisville	Colorado.
Equitable Savings and Loan Association	Sterling	Colorado.
FirstBank North	Westminster	Colorado.
State Bank of Wiley	Wiley	Colorado.
Stockgrowers State Bank of Ashland	Ashland	Kansas.
American Bank	Baxter Springs	Kansas.
Bendena State Bank	Bendena	Kansas.
Commercial State Bank	Bonner Springs	Kansas.
Citizens State Bank	Cheney	Kansas.
First National Bank of Clifton	Clifton	Kansas.
The Citizens National Bank	Concordia	Kansas.
The First National Bank	Cunningham	Kansas.
State Bank of Downs	Downs	Kansas.
Mid America Bank	Esbon	Kansas.
Garden City State Bank	Garden City	Kansas.
First Kansas Bank & Trust Company	Gardner	Kansas.
The First National Bank of Girard	Girard	Kansas.
First National Bank	Goodland	Kansas.
American State Bank & Trust Company, NA	Great Bend	Kansas.
The First State Bank of Healy	Healy	Kansas.
Morrill & Janes Bank and Trust Company	Hiawatha	Kansas.
Farmers and Merchants Bank of Hill City	Hill City	Kansas.
Hillsboro State Bank	Hillsboro	Kansas.
Hoisington National Bank	Hoisington	Kansas.
First National Bank of Holcomb	Holcomb	Kansas.
Denison State Bank	Holton	Kansas.
Howard State Bank	Howard	Kansas.
The Jamestown State Bank	Jamestown	Kansas.
Nekoma State Bank	La Crosse	Kansas.
First State Bank & Trust Company	Larned	Kansas.
Lawrence Bank	Lawrence	Kansas.
The State Bank of Lebo	Lebo	Kansas.
First National Bank	Liberal	Kansas.
Lyons Federal Savings	Lyons	Kansas.
Sunflower Bank, N.A	Salina	Kansas.
St. Marys State Bank	St. Marys	Kansas.
First National Bank of Clifton	St. Marys	Kansas.
Adams State Bank	Adams	Nebraska.
Heartland Community Bank	Bennet	Nebraska.

First National Bank of Chadron	Chadron	Nebraska.
Bank of Clarks	Clarks	Nebraska.
Citizens State Bank	Clearwater	Nebraska.
Farmers Bank of Cook	Cook	Nebraska.
Frontier Bank	Davenport	Nebraska.
Farmers State Bank	Dodge	Nebraska.
Filley Bank	Filley	Nebraska.
First National Bank of Gordon	Gordon	Nebraska.
Hastings State Bank	Hastings	Nebraska.
Security National Bank	Laurel	Nebraska.
American National Bank	Omaha	Nebraska.
Great Western Bank	Omaha	Nebraska.
Valley Bank and Trust Company	Scottsbluff	Nebraska.
Security First Bank	Sidney	Nebraska.
Iowa—Nebraska State Bank	South Sioux City	Nebraska.
Wahoo State Bank	Wahoo	Nebraska.
Citizens Bank & Trust Company	Ardmore	Oklahoma.
Peoples State Bank	Blair	Oklahoma
1st Bank & Trust	Broken Bow	Oklahoma.
Union Bank of Chandler	Chandler	Oklahoma.
First Bank of Chandler	Chandler	Oklahoma.
The First National Bank of Coweta, OK	Coweta	Oklahoma.
First National Bank	Davis	Oklahoma.
Edmond Bank and Trust	Edmond	Oklahoma.
Great Plains National Bank	Elk City	Oklahoma.
First Capital Bank	Guthrie	Oklahoma.
The Idabel National Bank	Idabel	Oklahoma.
Guarantee State Bank	Lawton	Oklahoma.
Bank of Locust Grove	Locust Grove	Oklahoma.
The Bank, National Association	McAlester	Oklahoma.
The Grant County Bank	Medford	Oklahoma.
First National Bank	Midwest City	Oklahoma.
All America Bank	Mustang	Oklahoma.
Frontier State Bank	Oklahoma City	Oklahoma.
Quail Creek Bank, N.A	Oklahoma City	Oklahoma.
Coopermark Bank	Oklahoma City	Oklahoma.
The Community State Bank	Poteau	Oklahoma.
The Exchange Bank	Skiatook	Oklahoma.
First National Bank of Stigler	Stigler	Oklahoma.
Stroud National Bank	Stroud	Oklahoma.
Bank of Oklahoma, NA	Tulsa	Oklahoma.
Tulsa National Bank	Tulsa	Oklahoma.
Waurika National Bank	Waurika	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

National Bank of Arizona	Tucson	Arizona.
Mid-State Bank & Trust	Arroyo Grande	California.
First California Bank	Camarillo	California.
Tri Counties Bank	Chico	California.
First Northern Bank of Dixon	Dixon	California.
Western State Bank	Duarte	California.
Community National Bank	Fallbrook	California.
First National Bank of North County	Lake San Marcos	California.
Manufacturers Bank	Los Angeles	California.
Cedars Bank	Los Angeles	California.
Hanmi Bank	Los Angeles	California.
World Savings Bank, F.S.B	Oakland	California.
Kaiperm Federal Credit Union	Oakland	California.
Citizens Business Bank	Ontario	California.
First Security Thrift Company	Orange	California.
LA Financial Federal Credit Union	Pasadena	California.
Bank of the Sierra	Porterville	California.
Plumas Bank	Quincy	California.
Inland Empire National Bank	Riverside	California.
American River Bank	Sacramento	California.
North Island Financial Credit Union	San Diego	California.
Mission Federal Credit Union	San Diego	California.
America California Bank	San Francisco	California.
National American Bank	San Francisco	California.
Citibank (West), FSB	San Francisco	California.
First National Bank of Nevada	Reno	Nevada.
First Republic Bank	Reno	Nevada.

Federal Home Loan Bank of Seattle—District 12

Wells Fargo Bank Alaska	Anchorage	Alaska.

Alaska USA Federal Credit Union	Anchorage	Alaska.
Alaska Pacific Bank	Juneau	Alaska.
First Hawaiian Bank	Honolulu	Hawaii.
City Bank	Honolulu	Hawaii.
Hawaii National Bank	Honolulu	Hawaii.
West Oahu Community Federal Credit Union	Kapolei	Hawaii.
Idaho Independent Bank	Coeur D'Alene	Idaho.
Bank of Idaho	Idaho Falls	Idaho.
Belt Valley Bank	Belt	Montana.
Flathead Bank	Bigfork	Montana.
First Boulder Valley Bank	Boulder	Montana.
First Citizens Bank	Columbia Falls	Montana.
First Madison Valley Bank	Ennis	Montana.
Heritage Bank	Great Falls	Montana.
Mountain West Bank, N.A	Helena	Montana.
Yellowstone Bank	Laurel	Montana.
Montana State Bank	Plentywood	Montana.
Valley Bank of Ronan	Ronan	Montana.
Citizens Bank	Corvallis	Oregon.
Oregon Community Credit Union	Eugene	Oregon.
Oregon Pacific Banking Company	Florence	Oregon.
Home Valley Bank	Grants Pass	Oregon.
Southern Oregon Federal Credit Union	Grants Pass	Oregon.
Town Center Bank	Portland	Oregon.
Williamette Valley Bank	Salem	Oregon.
Silver Falls Bank	Silverton	Oregon.
St. Helens Community Federal Credit Union	St. Helens	Oregon.
State Bank of Southern Utah	Cedar City	Utah.
America West Bank	Layton	Utah.
Far West Bank	Provo	Utah.
Central Bank	Provo	Utah.
Liberty Bank	Salt Lake City	Utah.
First Mutual Bank	Bellevue	Washington.
Foundation Bank	Bellevue	Washington.
Bank NorthWest	Bellingham	Washington.
Westsound Bank	Bremerton	Washington.
Coastal Community Bank	Everett	Washington.
Frontier Bank	Everett	Washington.
ShoreBank Pacific	Ilwaco	Washington.
Issaquah Bank	Issaquah	Washington.
Twin City Bank	Longview	Washington.
City Bank	Lynnwood	Washington.
Golf Savings Bank	Mountlake Terrace	Washington.
Redmond National Bank	Redmond	Washington.
School Employees Credit Union of Washington	Seattle	Washington.
United Savings and Loan Bank	Seattle	Washington.
The State National Bank of Garfield	Spokane	Washington.
Washington Trust Bank	Spokane	Washington.
Numerica Credit Union	Spokane	Washington.
Harborstone Credit Union	Tacoma	Washington.
Columbia State Bank	Tacoma	Washington.
Pierce Commercial Bank	Tacoma	Washington.
Westside Community Bank	University Place	Washington.
Baker Boyer National Bank	Walla Walla	Washington.
Mid State Bank	Waterville	Washington.
First National Bank of Buffalo	Buffalo	Wyoming.
Wyoming Bank & Trust	Cheyenne	Wyoming.
The Jackson State Bank & Trust	Jackson	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 27, 2006, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2004–05 eighth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2004–05 eighth quarter review cycle must be delivered to the Finance Board on or before the February 27, 2006 deadline for submission of Community Support Statements.

John P. Kennedy,

General Counsel.

[FR Doc. 06–57 Filed 1–12–06; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2006

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for administrative law judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustments to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2006. The 2006 AIC threshold amounts are $110 for ALJ hearings and $1090 for judicial review.

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

FOR FURTHER INFORMATION CONTACT: Michael L. Lipinski, Office of Medicare Hearings and Appeals, Office of the Secretary; (216) 615–4084.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act, as amended by section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the AIC threshold amounts for ALJ hearing requests and judicial review at $100 and $1000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act "MMA"), amended section 1869(b)(1)(E) to require the AIC threshold amounts for ALJ hearings and judicial review be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July of the preceding year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C (Medicare Advantage "MA") appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Social Security Act [42 U.S.C. 1395ff(b)(1)(E)], is included in the applicable implementing regulations, 42 CFR part 405, subpart I, at section 405.1006(b). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register**. 42 CFR 405.1006(b)(2). In order to be entitled to a hearing before an ALJ, a party must meet the AIC requirement. 42 CFR 405.1006(c). Similarly, a party must meet the AIC requirement at the time judicial review is requested for the court to have jurisdiction over the appeal. 42 CFR 405.1136(a).

B. Medicare Part C (Medicare Advantage) Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Part C (MA) appeals by amending section 1852(g)(5) of the Social Security Act [42 U.S.C. 1395w–22(g)(5)]. The implementing regulations for Medicare Part C appeals are found at 42 CFR part 422, subpart M. Specifically, sections 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party, except the MA organization, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states that any party, including the MA organization, may request judicial review if the amount in controversy meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 940(b)(2) of the MMA also amended section 1876(c)(5)(B) of the Social Security Act [42 U.S.C. 1395ff(c)(5)(B)] to make section 1869(b)(1)(E) applicable to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals set forth in Subpart M of 42 CFR part 422 and discussed above, apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) regarding Part D appeals to the Social Security Act [42 U.S.C. 1395w–104(h)(1)]. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Social Security Act [42 U.S.C. 1395w–22(g)(4), (g)(5)] in a similar manner as MA organizations. As noted above, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR part 423, subpart M. The regulations impart at section 423.562(c) that unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals. More specifically, sections 423.610 and 423.630 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.610(a) grants a Part D enrollee, who is dissatisfied with the Independent Review Entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Section 423.630(a) allows a Part D enrollee to request judicial review if the AIC meets the threshold amount established annually by the Secretary.

II. AIC Adjustment Formula and the 2005 and 2006 AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January of 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July of the preceding year involved and rounded to the nearest multiple of $10.

A. Calendar Year 2005

The AIC threshold amount for ALJ hearing requests remained at $100 and the AIC threshold amount for judicial review rose to $1,050 for the 2005 calendar year. The amounts were based on the 4.5 percent increase in the medical care component of the CPI from

July of 2003 to July of 2004 as published by the Bureau of Labor Statistics, Department of Labor. The CPI level was at 297.6 in July of 2003 and rose to 311 in July of 2004. This change accounted for the 4.5 percent increase. The increase in the AIC threshold for ALJ hearing requests would have changed to $104.50 based on the 4.5 percent increase. Section 940 of the MMA requires, however, that the increase be rounded to the nearest $10 if the increase is not a multiple of $10. Therefore, after rounding, the 2005 AIC threshold amount for ALJ hearings remained at $100. The AIC threshold amount for judicial review changed to $1,045 based on the 4.5 percent increase. This amount was rounded to the nearest multiple of $10, resulting in a 2005 AIC threshold amount of $1,050.

The 2005 AIC threshold amounts were published in the preamble to the Interim Final Rule, 70 FR 11423 (March 8, 2005), regarding "Changes to the Medicare Claims Appeal Procedures." In addition, this information was previously made available to the public through a change to the Medicare Claims Processing Manual. CMS Change Request 3127, Revisions and Corrections to Chapter 29 of the IOM, Claims Processing Manual—Appeals § 30.8 (Nov. 26, 2004).

B. Calendar Year 2006

The AIC threshold amount for ALJ hearing requests has risen to $110 and the AIC threshold amount for judicial review has risen to $1,090 for the 2006 calendar year. These new amounts are based on the 8.9 percent increase in the medical care component of the CPI from July of 2003 to July of 2005. The CPI level was at 297.6 in July of 2003 and rose to 324.1 in July of 2005. This change accounted for the 8.9 percent increase. The increase in the AIC threshold amount for ALJ hearing requests changes to $108.90 based on the 8.9 percent increase. In accordance with section 940 of the MMA, this amount is rounded to the nearest multiple of $10. Therefore, the 2006 AIC threshold amount for ALJ hearings is $110. The AIC threshold amount for judicial review changes to $1,089 based on the 8.9 percent increase. This amount was rounded to the nearest multiple of $10, resulting in a 2006 AIC threshold amount of $1,090.

C. Summary Table of Adjustments in the AIC Threshold Amounts

TABLE 1.—AMOUNT-IN-CONTROVERSY THRESHOLD AMOUNTS

	CY 2004	CY 2005	CY 2006
ALJ Hearing	$100	$100	$110
Judicial Review	1000	1050	1090

*CY—Calendar Year.

Dated: January 9, 2006.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 06–346 Filed 1–10–06; 2:43 pm]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey III (NHANES) DNA Specimens: Guidelines for Proposals To Use Samples and Cost Schedule

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS have provided national estimates of the health and nutritional status of the U.S. civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population, blood lymphocytes were collected in NHANES III in anticipation of advances in genetic research.

The lymphocytes have been stored and maintained at the Division of Laboratory Sciences (DLS) at the National Center for Environmental Health (NCEH), CDC. The collection of lymphocytes was begun in the second phase of the survey (1991–1994) because of the significant advances in the rapidly evolving field of molecular biology that were occurring during the planning phase of this survey. CDC is making DNA samples from these specimens available to the research community for genetic analyses. Specimens are available from approximately 7,159 participants in the second phase of NHANES III. No cell lines will be made available.

This program has been previously announced (Tuesday, June 1, 1999 [64 FR 29321]; Thursday, August 8, 2002 [67 FR 51585]). The purpose of this notice is to announce a fourth category for proposals for use of these specimens, add an additional secondary review of approved applications and provide a new proposal schedule. For final proposal guidelines and requests or letters of intent, please contact Ms. Oraegbu or go to *http://www.cdc.gov/nchs/about/major/nhanes/dnafnlgm2.htm.*

All interested researchers are encouraged to submit letters of intent. No funding is provided as part of this solicitation. Proposals will be reviewed by a technical panel and approved applications will be reviewed by an internal Secondary Review Committee, which will perform a programmatic review based on the results of the peer review for technical merit. The primary purpose of the Secondary Review Committee is to factor in the scientific and technical results from the first level of review, important programmatic considerations such as program priorities, program relevance, and other criteria germane to this announcement and to CDC. The secondary review panel will be comprised of senior CDC scientists, who will advise the Director, NCHS, on the approved applications. Projects approved by both reviews will be submitted to the NCHS Ethics Review Board for final approval.

Approved projects that do not obtain funding on their own will be canceled. A more complete description of this program follows.

DATES:

- Letter of Intent Receipt: February 13, 2006.
- Submission of Proposals: March 14, 2006.
- Scientific Review: April 13, 2006.
- Secondary Review: May 15, 2006.
- Ethics Review Board: July 12, 2006.
- Notification of approval: August 1, 2006.
- Anticipated distribution of samples: December 11, 2006.

ADDRESSES: To send comments and for information, contact:

Ms. Kika Oraegbu, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4207, Hyattsville, MD 20782, Phone: 301–458–4367, Fax: 301–458–4028, *E-mail: KDO1@cdc.gov.* Internet: *http://www.cdc.gov/nchs/about/major/nhanes/dnafnlgm2.htm.*

SUPPLEMENTARY INFORMATION: The goals of NHANES are: (1) To estimate the number and percentage of people in the U.S. population and designated subgroups with selected diseases and risk factors for those diseases; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relation among diet, nutrition and health; (6) to explore emerging public health issues and new technologies; (7) to establish and maintain a national probability sample of baseline information on health and nutritional status.

The Third National Health and Nutrition Examination Survey (NHANES III) began in the Fall of 1988 and ended in the Fall of 1994. Survey data were collected and can be analyzed from two phases: Phase I was conducted from October, 1988, to October, 1991, and Phase II was conducted from October, 1991, to October, 1994. Both phases are nationally representative samples. For details of the sampling design see the Plan and Operation of NHANES III (1). This information can be obtained by contacting the Data Dissemination Branch, NCHS, at 301–458–4636 or from the Internet at *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm.*

Blood specimens were collected from participants as a part of NHANES III. Lymphocytes were isolated from the blood collected from participants aged 12 years and older and stored frozen in liquid nitrogen or as cell cultures immortalized with Epstein-Barr virus and frozen at the Molecular Biology Branch of DLS, NCEH, CDC, Atlanta, GA. DNA in the form of crude cell lysates is available from the cell lines derived from samples obtained from Phase II (1991–1994) participants. DNA concentrations are unknown and vary between samples.

Health information collected in the NHANES III is kept in strictest confidence. During the informed consent process, survey participants are assured that data collected will be used only for stated purposes and will not be disclosed or released to others without the consent of the individual or the establishment in accordance with section 308(d) of the Public Health Service Act (42 U.S.C. 242m). Although the consent form was signed by participants in the survey, and participants consented to storing specimens of their blood for future research, specific mention of genetic research was not included. Nevertheless, given the scientific importance of this resource, the CDC/NCHS Ethics Review Board (ERB) approved making anonymized samples of DNA available to the genetic research community.

The anonymization requirements proved to be restrictive and difficult to implement, therefore, in August, 2001, the CDC/NCHS ERB approved a revised plan for using these specimens based on the guidelines in the August, 1999, National Bioethics Advisory Commission (NBAC) report on the use of stored biological materials for research. This revised plan includes a process that gives researchers the ability to obtain more information associated with specimens for protocols that are determined by the ERB to have minimal risk for harm to the participant. For those protocols that cannot be conducted under unlinked (or anonymous) conditions, but have been determined to involve minimal risk, the revised plan allows for linking the genetic laboratory results to the NHANES data through the NCHS Research Data Center. This process would ensure that confidentiality of the subjects' identity is maintained and would reduce the possibility that linking genetic information to the NHANES III data files might identify an individual or cause group harm.

Potential Research Proposals

Category (A): Special studies using the NCHS Research Data Center: Complete set of samples in 96-well plates (a total of 7,159 samples distributed into 75 plates with additional five plates of quality control samples). Studies which request DNA samples linked to previously collected NHANES III public use data without the restriction of anonymization. Data analyses must be done within the NHANES Research Data Center.

Category (B): Age-race-sex studies using anonymized samples: A limited number of subsets may be distributed in 50μL cryovials. Subsets based on the selection criteria proposed by investigators. Studies of allele frequencies which require only basic demographic information (age, race/ethnicity, and sex) to be linked to the samples.

Category (C): Special anonymized studies: A limited number of subsets may be distributed in 50μL cryovials. Subsets based on the selection criteria proposed by investigators. Studies in which additional co-variates from the NHANES III public use database are required, but the re-coding maintains anonymization (minimum of five individuals in each statistical cell) of the samples.

Category (D): Additional research using specimens already obtained from previous solicitations: Researchers that have obtained NHANES III DNA samples from previous solicitations and have sufficient DNA left that they can now do additional genotyping, may request doing these additional tests on the remaining DNA. Proposals under this Category must be submitted and approved before the DNA would have had to be destroyed or returned. The proposals will be reviewed by the NHANES Genetic Technical Panel, the CDC Secondary Review panel and the ERB and if accepted, the researcher can begin the additional analysis with only the administrative cost for data handling.

These research designs A–C do not differ from the previous Plan for distributing NHANES III DNA samples to researchers.

Category (A): Special studies using the NCHS Research Data Center— Distribution of the complete set of 96 well plates (a total of 7,159 samples distributed into 75 plates with five additional plates with quality control samples). The investigator will specify the genetic analyses to be conducted on the samples. The investigator will also include in the research protocol application a list of demographic and clinical variables that would be used for the data analyses. Data analyses that combine the genetic analyses with NHANES III public use data must be conducted through the NCHS Research Data Center (RDC) or its equivalent in the Division of Health and Nutrition Examination Surveys. The researcher will conduct the genetic laboratory analyses on the samples that are labeled with a unique identification number that is not directly linkable to the public use file and therefore, anonymous to the researcher. To perform the data analyses, the researcher will provide the results of the genetic laboratory tests with the identification numbers to the Division of Health and Nutrition Examination Surveys (DHANES). The identification numbers will be matched to the NHANES III public use file data

by DHANES staff. The resulting data file will be used for these analyses. Data analyses will be conducted at NCHS under the direction of the researcher. Individual data sets will not be generated but the researcher can obtain the output from these analyses.

Category (B) Age-race-gender Studies: A limited number of subsets may be distributed in 50µL cryovials. Subsets based on the selection criteria proposed by investigators. To facilitate the research proposal preparation of allele frequency, NCHS will make the following data available with the DNA sample: age in ten year age groups, race-ethnicity (white, black, Mexican-American), gender, mean sample weights for each demographic group and the average design effect. Thus, investigators wishing to submit proposals under this research design type do not need to provide an analysis of NHANES III data to support the unlinked (anonymization) scheme proposed. These data have sufficient sample sizes in each category (the smallest age, race/ethnicity, gender statistical cell contains 62 persons) to preserve anonymity. To further preserve anonymity, only 80 percent of the subjects in each statistical cell will be used. NCHS will provide a data file with the demographic variables and the sample weights linked to a randomly assigned unique identification number that is linked to the DNA specimen. No record connecting the new number with the original identification number will be kept after the samples have been sent. These samples cannot be traced to any files maintained by NCHS.

Proposals submitted for this category of review are limited to those requesting samples from within this ages, gender, race/ethnicity cells for identifying the frequency of the alleles in the population. These proposals must address all criteria except for the verification that anonymization can be achieved.

Category (C): Special Anonymized Studies (Requests for Additional Variables)—A limited number of subsets may be distributed in 50µL aliquots in cryovials. Subsets are based on the selection criteria proposed by the investigator(s). The investigator will include a list of demographic and clinical variables and specify recoding schemes, if appropriate, that the principal investigator would like to have linked to the samples to meet the objectives of the study. The combined information on all variables provided to the investigator by CDC *must not* constitute a unique set of values that could link the samples with participant data on the NHANES III public use data set. Investigators should obtain the NHANES III Public Use Data and should verify that anonymity can be achieved before submitting the proposal with the requested set of variables.

A cross tabulation of all requested variables must be provided and must demonstrate that there are at least five individuals in each statistical cell of that cross tabulation. Recoding is required for continuous variables and may be required for integral variables to ensure anonymity. Because the samples are primarily available from phase II subjects, these analyses should be run using phase II subjects only (SDPPHASE=2). (Household codes are confidential data. Therefore, if only one individual per household is to be included in the protocol, the investigator can estimate the sample size per statistical cell by halving the cross tabulation results. For instance, if only one individual per household is requested, the minimum statistical cell size of the cross tabulation should be ten subjects.) From each statistical cell, either two observations or 20 percent of the subjects of the cell, whichever is larger, will be deleted from the pool of samples sent to the investigator. In all this proposal design, the investigators will receive samples that are coded with a random identifier that is unique to that proposal and not linkable to any other data or data file once the crosswalk is deleted. NCHS will provide a data file with the requested recoded variables and a randomly assigned unique identification number that is linked to the DNA specimen. No record connecting the new number with the original identification number will be kept after the samples have been sent. These samples cannot be traced to any files maintained by NCHS.

Category (D): Additional research using specimens already obtained from previous solicitations: Researchers that have obtained NHANES III DNA samples from previous solicitations and have sufficient DNA left that they can now do additional genotyping, may request doing these additional tests on the remaining DNA. The guidelines for the proposals are the same as Category A proposals and will be reviewed by the NHANES Genetic Technical Panel, the CDC Secondary Review Panel and the ERB. If the additional research proposal is accepted, the researcher can begin the additional analysis with only the administrative cost for data handling (ten percent of the cost of a full set of samples). Proposals under this Category must be submitted and approved before the DNA would have had to be destroyed or returned.

DNA Samples

For proposals falling into category A, the laboratory will distribute 100 µl aliquots of crude cell lysate. The amount of DNA in each aliquot will be approximately 180–1,500 nanograms (ng). Aliquots will be dispensed into 96-well plates for distribution to investigators. Each plate will be bar-coded and labeled with a readable identifier. Quality control samples (approximately 480 samples) will be sent, either inserted with the NHANES samples or in separate plates, as blind duplicate and/or blanks. Approximately ten sample sets of specimens from 7,159 participants will be available for proposals. An investigator must purchase the samples in full sets. For proposals falling into category B or C, specimens will be distributed in 50 µL aliquots in cryovials rather than 96-well plates. The amount of DNA in each aliquot will be approximately 90 to 750 nanograms. Only a limited number of smaller specialized sets for category B or C are available. There are only two complete sets of cryovials, so the number of projects that can be filled with these samples depends on the types of projects proposed.

Proposed Cost Schedule for Providing Nhanes III DNA Specimens

A nominal processing fee of $6.39 is charged for each sample received from the NHANES III DNA Specimen Bank if the full sets of specimens (category A) are requested. If more limited sets of cryovials are requested, a cost of $38.00/vial is assessed to cover the manual selection of these samples. For proposals submitted under category D, where the researcher already is in possession of the NHANES DNA and administrative cost of ten percent of the processing fee will be charged to cover the data base processing and handling at NCHS. Costs are determined both for NCEH and NCHS and include the physical materials needed to process the samples at the NCEH laboratory, as well as the materials to process the requests for samples at NCHS. These costs include salaries of the staff needed to conduct these activities at each Center. The fee is estimated to cover the costs of processing, handling, and preparing the samples in accordance with the detailed requirements of the investigators.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples for shipping. Labor costs are based on the need for genetic analysts, a proposal administrator, and computer programmers for NCHS and NCEH to

maintain the data bases and verify anonymity. Technical panel travel and expenses are based on the panel meeting once a year. The space estimate is based on acquiring storage and sample aliquoting space in the laboratory.

Total costs	Per sample for 7,159 samples in 96-well plates	Per sample for individual cryovials
Materials	$0.85	$1.90
Labor	3.30	22.00
Application review and other administrative expenses	0.35	2.69
Space	0.13	0.97
Subtotal	4.63	27.56
NCHS overhead (15 percent)	0.69	4.12
Subtotal	5.32	31.68
CDC/FMO overhead (20 percent)	1.06	6.32
Total cost per sample	6.39	38.00
Total cost per proposal	45,746	NA
Total cost per Category D proposal: for Data handling	4,662	[1]

[1] 10 Percent of original cost of specimens.

Shipping costs are not included in the processing fee. These costs must also be paid by the investigator.

Procedures for Letter of Intent

NCHS will post information about letters of intent on the NHANES Web site *www.cdc.gov/nchs/about/major/nhanes/nhanes.htm*, by January 13, 2006. The letter of intent is required to enable CDC to plan the review more efficiently, evaluate the number of requests, and to assess the capacity of the DNA Bank to fulfill requests. All letters of intent will be reviewed by the Division of Health and Nutrition Examination Surveys staff for potential major problems related to the feasibility of the project. If a problem is identified, the Division staff will inform the investigator so it can be addressed in the proposal.

All potential investigators must submit letters of intent. The letter should be no more than two pages and include (1) A descriptive title of the overall proposed research; (2) the name, address and telephone number of the Principal Investigator (PI); (3) a list of key investigators and their institution(s); (4) one paragraph on the background for the proposal and a paragraph briefly addressing each criterion for technical evaluation of letters of intent and proposals; (5) the genetic assessments proposed; (6) a list of proposed variables; and (7) an estimate of the number of samples that would be requested. The background paragraph should state concisely the importance of the research in terms of the broad, long-term objectives and public health relevance and consistency of NCHS' mission to monitor the nation's health.

Letters of intent should be submitted by February 13, 2006. E-mail submission is encouraged.

Ms. Kika Oraegbu, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4207, Hyattsville, MD 20782, Phone: 301–458–4367, FAX: 301–458–4028, E-mail: *KDO1@cdc.gov*.

Procedures for Proposals

The investigator should follow these instructions for preparation of proposals. All proposal categories need a full research proposal for review. The cover page of the research proposal should contain the title of the research project, the name, address, phone number and E-mail address of the lead investigator along with the name of the institution where the DNA analysis will be done, and the category of proposal (A, B, C, D) submitted. Office for Human Research Protections (OHRP) assurance number for the institutions included in the research project should be included. CDC investigators need to include their Scientific Ethics Verification Number. E-mail submission of the proposal is encouraged.

The proposals should be a maximum of 20 single-spaced typed pages, excluding figures and tables, using ten cpi type density. Please use appendices sparingly. If a proposal is approved, the title, specific aims, name, and phone number of the author will be maintained by NCHS and released if requested by the public. Unapproved proposals will be returned to the investigator and will not be maintained by NCHS.

Since the number of sets of DNA is limited for this round of proposals, proposals will be reviewed by the technical panel and then will be reviewed by a secondary review panel composed of CDC officials. The technical panel will determine if the proposal is technically sound and if so, the technical panel will rank the proposal on a scale of 0–100. Proposals that are rejected will not be scored. The technical panel will evaluate the whole proposal but will focus on proposal elements 1, 3, 5, 6, and 7.

Approved applications will be reviewed by an internal Secondary Review Committee, which will perform a programmatic review based on the results of the peer review for technical merit. The primary purpose of the Secondary Review Committee is to factor in the scientific and technical merit results from the first level of review, important programmatic considerations such as program priorities, program relevance, and other criteria germane to this announcement and to CDC. The secondary review panel will be comprised of senior CDC scientists, who will advise the Director, NCHS, on the approved applications.

The proposal title page should include the title of the research proposal; a list of the investigators and institutions; OHRP assurance number for the institutions included in the research project; address, phone number and E-mail address of lead investigator. CDC investigators need to include their Scientific Ethics Verification Number. The proposal should contain, and will be evaluated according to, the following elements:

(1) *Specific Aims:* List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested. Category D proposals where the

researcher already has the set of DNA samples and Category A proposals which request using the full set of specimens will receive priority consideration. Category B and C proposals will be evaluated together since they will be competing for the limited set of cryovials.

(2) *Background and Public Health Significance:* Describe the public health significance, scientific merit, and practical utility of the assay. Scientific merit will be judged on the basis of the scientific, technical, or medical significance of the research; the appropriateness and adequacy of the experimental approach; and the methodology proposed to reach the research goals. Convey how the results will be used and the relation of the results to the data already collected in NHANES III. Analyses should be consistent with the NHANES mission to assess the health of the nation. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of using the NHANES sample to address the goals of the proposal will be an important aspect of determining scientific merit. The Panel will ensure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, *i.e.*, to determine allele frequencies in subgroups of the population, or, the specific stated goals of the proposal.

(3) *Research Design and Methods:* Describe the sampling scheme and number of samples requested if submitting a category C proposal. Include power calculations for the sub-sample and a list of variables requested; provide a cross-tabulation of requested variables for category C proposals. For all proposal categories, include a detailed description of the laboratory methods. The use of standard genotyping reactions vs. multiplex reactions should be discussed with reference to any anticipated problems and proposed solutions with the use of the cell lysate provided. The characteristics of the laboratory assay, such as reliability, validity, should be included with appropriate references. The potential difficulties and limitations of the proposed procedures should also be discussed. Approximately 480 quality control samples will be provided at no additional cost but the approved projects must run these samples and submit the results with the NHANES DNA samples. The proposal should contain a discussion of additional quality control procedures the laboratory used to assure the validity of the test results. Address adequate methods for handling and storage of samples. NCHS will verify the anonymity for category B and C proposals.

(4) *Discussion regarding the race/ethnicity variables:* If the sample request is limited to specific race or ethnic groups or if information about the race or ethnicity of the subjects is requested, indicate the reason for analyzing race/ethnicity and how the results will be interpreted. Discuss the potential for group harm.

(5) *Clinical relevance of research findings:* The specimens under this Plan are available for genetic research, not genetic testing. Therefore, it is the intent of the program to approve only those proposals that would yield meaningful research, but not clinically relevant information for the participants. Researchers should address whether or not findings from the proposed research merit disclosure.

(6) *Qualifications:* Provide a brief description of the requestor's expertise in the proposed area, including publications in this area within the last three years.

(7) *Anonymity:* Final approval is based upon NCHS confirmation that anonymity can be maintained by the categorization of variables for category C proposals (proposals requiring anonymity).

(8) *Period of performance:* Specify the project period. The period may be up to three years. At the end of the project period, any unused samples must be returned to the NHANES DNA Specimen Bank in accordance with instructions from the Division of Environmental Laboratory Science unless a new Category (D) proposal has been approved. Extensions to the period of performance may be requested.

(9) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis. Investigators will be responsible for the cost of processing and shipping the samples. Currently the cost per DNA specimen is $6.39 for proposals that use the full set of samples (7,159) and $38.00 per sample for subsets. Reimbursement for the samples will be collected before the samples are released.

Proposals approved by a Genetics Technical Panel and the Secondary Review Panel will also be reviewed by the CDC/NCHS ERB for human subject concerns. The ERB review will be conducted, even though investigator's proposals may have received review by their home institution. The Panel will also review an NCHS evaluation of whether anonymity can be assured for the proposed project for proposals in categories B and C. The samples that are sent to the investigator will be selected randomly from the domains by NCHS staff. The Director of NCHS will verify that projects have received appropriate reviews.

Requirements for the Inclusion of Women and Racial and Ethnic Minorities in Research

In NHANES III, race/ethnicity was defined by self-report as non-Hispanic white, non-Hispanic black, or Mexican American. Individuals who did not self-select into these categories were classified as "other". If the proposal excludes one or more race/ethnic groups or a gender, this exclusion must be justified.

CDC is also sensitive to the stigmatization of racial/ethnic specific populations through inappropriate reporting and interpretation of findings. For all proposals that request information on race/ethnicity for the samples selected, the investigator should indicate the reason for analyzing race/ethnicity and how the results will be interpreted.

Submission of Proposals

Proposals should be submitted by March 14, 2006. All investigators who submitted letters of intent may submit proposals.

Electronic submission of proposals is encouraged. Please submit proposals to: Ms. Kika Oraegbu, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Rd., Room 4207, Hyattsville, MD 20782, Phone: (301) 458–4367, Fax: (301) 458–4028, E-mail: *KDO1@cdc.gov.*

Approved Proposals

NCHS will provide a data file with the requested recoded variables (for category B and C proposals) and a randomly assigned unique identification number that is linked to the DNA specimen. No record connecting the new number with the original identification number will be kept after the samples have been sent. These samples cannot be traced to any files maintained by NCHS. For proposals in category A and D, the genetic results will be sent back to NCHS so they can be linked to the NHANES III public use data in the Research Data Center for analysis.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed

before the release of the samples. This agreement will contain the conditions for use of the DNA as stated in this document and as agreed upon by the investigators and CDC. A key component of this agreement is that no attempt will be made to link the results of the proposed research to any other data, including, but not limited to, the NHANES III public use data set. Also, the investigator agrees that the samples cannot be used for commercial purposes. A list of genes generated from the testing of the NHANES III samples will be made available to the public for potential solicitation of proposal for secondary data analysis, six months after the data is sent to the RDC. These secondary data analysis proposals must also be reviewed by the NHANES Genetics Technical Panel and the ERB.

Progress Reports

A progress report will be submitted annually. CDC/NCHS ERB continuation reports are also required annually.

Disposition of Results and Samples

No DNA samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Genetics Technical Panel, the Secondary Review Committee and the NHANES ERB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be destroyed upon completion of the approved project, unless a request is submitted and approved under Category D. Researchers requesting DNA samples for age-race-gender studies and special studies will be required to provide NCHS with the results of all DNA tests performed for each anonymized sample. These results, once returned to NCHS, will be part of the public domain. Therefore, ample time will be given to the investigator to publish results prior to reporting the results to NCHS.

Send Requests for Information

Ms. Kika Oraegbu, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4207, Hyattsville, MD 20782, Phone: 301–458–4367, Fax: 301–458–4028, E-mail: *KDO1@cdc.gov*.

References

1. Plan and Operation of the Third National Health and Nutrition Examination Survey, 1988–94. National Center for Health Statistics. Vital Health Stat (32) 1994.

2. Clayton EW, Steinberg KK, Khoury MJ, *et al*. Informed consent for genetic research on stored tissue samples. JAMA 1995;274:1786–1792.

Dated: December 21, 2005.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. E5–8104 Filed 1–12–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

University of Arkansas/Food and Drug Administration Food Labeling; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 4, 2006 (71 FR 349). The document announced a public workshop entitled "UA/FDA Food Labeling Workshop." The document was published with a typographical error in the **SUPPLEMENTARY INFORMATION** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug Administration, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–243–4970.

SUPPLEMENTARY INFORMATION: In FR Doc. E5–8225, appearing on page 349, in the **Federal Register** of Wednesday, January 4, 2006, the following correction is made:

1. On page 349, in the third column, the second sentence under **SUPPLEMENTARY INFORMATION** is corrected to read: "This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Dallas District Office."

Dated: January 9, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–268 Filed 1–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Synthesis and High-Throughput Screening of In Vivo Cancer Molecular Imaging Agents.

Date: February 24, 2006.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, 6130 Executive Boulevard, Room C, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Kenneth L Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7576. *bielatk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–303 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Manpower and Training Grants.

Date: January 27, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–304 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Manpower and Training Grants.

Date: February 13–14, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–305 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Topic 206 "Methods for Innovative Pharmaceutical Manufacturing & Quality Assurance".

Date: March 8, 2006.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lalita Palekar, PhD, Scientific Review Administration, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Consruction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93:398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committe Policy.

[FR Doc. 06–312 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee I—Career Development, NCI I—Career Development; Dr. Robert Bird.

Date: February 13–14, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8113, MSC 8328, Bethesda, MD 20892–8328. 301–496–7978. *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–313 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: February 3, 2006.

Closed: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1:30 p.m. to adjournment.

Agenda: The agenda includes opening Remarks by Director, NCCAM, presentations of research results, and other business of the Council.

Place: Neuroscience Center, 6001 Executive Boulevard, Conference rooms C/D, Bethesda, MD 20892.

Contact Person: Richard Nahin, PhD, MPH, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–7801.

The public comments session is scheduled from 4–4:30 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–6701, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 23, 2006. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Richard Nahin at the address listed above up to ten calendar days (February 13, 2006) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Richard Nahin, Acting Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–7801, Fax: 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 06–306 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education.

Date: March 14–15, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, NCCAM, National Institutes of Health, Suite 401, MSC 5475, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 402–1030, *donzel@mail.nih.gov.*

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–307 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel "Partnerships for Hepatitis C Vaccine Development."

Date: January 27, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Holiday Inn, Capitol Hill, 550 C Street, SW., Washington, DC 20024.

Contact Person: Lucy A. Ward, DVM, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 594–6635, *lward@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Units for HIV/AIDS Clinical Trials Network ZAI1–MH–A–M2 (13).

Date: January 31, 2006.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mary J. Homer, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3147, Bethesda, MD 20892, (301) 496–2550, *mjhomer@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–308 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Hurricane Katrina Time Sensitive Review.

Date: January 11, 2006.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892. 301–402–7964. *mh392g@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–309 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: March 7–8, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Coulis, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. 301–443–2105.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: March 7–8, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892. 301–402–7964. *mh392g@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: March 7–8, 2006.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflicts.

Date: March 7, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401. 301–402–6626. *gm145@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Meeting.

Date: March 20, 2006.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Rita Liu, Ph.D., Associate Director, Office or Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects Meeting.

Date: March 20, 2006.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Rita Liu, Ph.D., Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug-Abuse Research Programs, National Institutes of Health, HHS).

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–310 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Small Grant for New Investigators.

Date: January 10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAMS/NIH, Democracy One, 6701 Democracy Boulevard 800, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892–4874. (301) 594–4955. *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Project Grant.

Date: January 12, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Democracy Plaza, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yan Z. Wang, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892. (301) 594–4957.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–311 Filed 1–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI)—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI). The data collected will describe the children and families served by the National Child Traumatic Stress Network (NCTSN) and their outcomes, assess the development and dissemination of effective treatments and services, evaluate intra-network collaboration, and assess the Network's impact beyond the NCTSN.

Data will be collected from caregivers, NCTSN staff (*e.g.*, project directors, researchers, and providers), mental health providers outside of the NCTSN, and non-mental health service providers who provide services to children outside of the NCTSN. Data collection will take place in 31 Community Treatment and Services Programs (CTS), 13 Treatment and Service Adaptation Centers (TSA), and 2 National Centers for Child Traumatic Stress (NCCTS). Data collection for this evaluation will be conducted over a four-year period.

In order to describe the children served, their outcomes, and satisfaction with services, data will be collected from youth ages 7–18 who are receiving services in the NCTSN, and from caregivers for all children who are receiving NCTSN services. Data will be collected when the child/youth enters services and during subsequent follow-up sessions at three-month intervals over the course of one year. Approximately 2,333 youth and 3,300 caregivers will participate in the evaluation.

Data will be collected for use in the development of evaluation measures that will assess the development, dissemination and adoption of trauma-informed services. These data will be collected from a total of approximately 121 NCTSN service providers, project directors and NCCTS staff. Data will be collected one time from these respondents.

Measures that collect data on development, dissemination, and adoption of trauma-informed services and other NCTSN products will be administered to approximately 1,100 service providers, 88 project directors, and 44 researchers/evaluators. These measures will be administered once per year in each of the four years of the evaluation.

To assess collaboration across the network, data will be collected from approximately 454 NCTSI staff and 54 project directors/principal investigators. The surveys associated with this data collection will be administered at varying intervals, with either one or two data collection points per respondent over the four years of the evaluation.

Product development and dissemination will be evaluated with data that will be collected from 88 project directors/principal investigators. These data will be collected annually.

To assess the national impact of the NCTSN, data will be collected from 1,600 mental health and 1,600 non-mental health service providers from outside the NCTSN. These data will be

collected every second year over the four years of the evaluation (*i.e.*, two data collection points per respondent).

NOTE.—TOTAL BURDEN IS ANNUALIZED OVER THE 3-YEAR CLEARANCE PERIOD

Instrument	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	3 yr. average annual burden hours
Caregivers					
Child Behavior Checklist 1.5–5/6–18 (CBCL 1.5–5/6–18) ..	[1] 3,300	5	0.3	5,445	1,815
Trauma Information/Detail Form	3,300	5	0.2	3,630	1,210
Baseline/Renewal Assessment	3,300	5	0.2	3,630	1,210
Core Clinical Characteristics Form	3,300	5	0.4	6600	2200
Youth Services Survey for Families (YSS–F)	3,300	1	0.1	264	88
UCLA–PTSD Short Form (UCLA–PTSD)	3,300	5	0.2	2,805	935
Case Study Interviews	[2] 5	1	1.5	8	3
Youth					
Trauma Symptoms Checklist for Children—Abbreviated (TSCC–A)	[3] 2,333	5	0.3	3,849	1,283
Network Service Provider					
Trauma-informed Service Key Informant Interviews	18	1	0.5	9	3
Trauma-informed Service Discussion Groups	54	1	1.0	54	18
Trauma-informed Service Provider Survey (TIS)	1,540	3	0.5	2,310	770
General Adoption Assessment Survey (GAAS)	1,100	3	0.5	1,650	550
Adoption and Implementation Factors Interview (AIFI)	50	2	0.5	50	17
Project Director/Principal Investigator					
Trauma-informed Service Key Informant Interviews	18	1	0.5	9	3
Trauma-informed Service Discussion Groups	18	1	1.0	18	6
Product/Innovations Development and Dissemination Survey (PDDS)	88	3	1.5	396	132
General Adoption Assessment Survey (GAAS)	44	3	0.5	66	22
Adoption and Implementation Factors Interview (AIFI)	9	2	0.5	9	3
Network Survey	54	2	1.0	108	36
Other Network Staff					
Trauma-informed Service Key Informant Interviews	[4] 4	1	0.5	2	1
Trauma-informed Service Discussion Groups	[4] 9	1	1.0	9	3
Telephone Interviews	[5] 35	2	1.5	105	35
Case Study Interviews	[6] 10	1	2.0	20	7
General Adoption Assessment Survey (GAAS)	[7] 44	3	0.5	66	22
Adoption and Implementation Factors Interview (AIFI)	[8] 30	2	0.5	30	10
Network Survey	[9] 54	2	1.0	108	36
Child Trauma Partnership Tool (CTPT)	[10] 400	1	0.8	300	100
Non-Network Mental Health Professionals					
National Impact Survey	1,600	2	0.5	1,600	533
Non-Network Non-Mental Health Professionals					
National Impact Survey	1,600	1	0.5	800	267
Non-Network Product Developers					
Case Study Interviews	10	1	1.5	15	5
Total Summary	10,999	71	.....	.....	33,965
Total Annual Summary	3,666	24	.....	.....	11,322

[1] An average of 25 caregivers in 44 NCTSN centers (31 CTS. 13 TSA) will participate in the Descriptive and Clinical Outcomes and Satisfaction studies.
[2] One caregiver will participate in each of the 5 case studies that will be conducted during the clearance period.
[3] Based on SUF Report of demographics of children served in the NCTSN, approximately 71 percent of the children in the evaluation will be between the ages of 7 and 18.
[4] Respondents will be NCCTS staff.
[5] Respondents will be workgroup/taskforce coordinators.
[6] Respondents will be stakeholders.
[7] Respondents will be evaluators.
[8] Respondents will be researchers, supervisors, and administrators.
[9] Respondents will be center directors.

[10] Respondents will be collaboration structure staff.

Written comments and recommendations concerning the proposed information collection should be sent by February 13, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: January 9, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–303 Filed 1–12–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. NCS–2006–0001]

Preparedness Directorate; National Security Telecommunications Advisory Committee

AGENCY: Preparedness Directorate, DHS.

ACTION: Notice of partially closed advisory committee meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet in a partially closed session.

DATES: Tuesday, January 31, 2006, from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will take place by teleconference. For access to the conference bridge and meeting materials, contact Mr. William Fuller at (703) 235–5521, or by e-mail at *William.C.Fuller@dhs.gov* by 5 p.m. on Friday, January 27, 2006. If you desire to submit comments, they must be submitted by February 6, 2006. Comments must be identified by NCS–2006–0001 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NSTAC@dhs.gov.* Include docket number in the subject line of the message.
- *Mail:* Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC 20529.

Instructions: All submissions received must include the words "Department of Homeland Security" and NCS–2006–0001, 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 by the NSTAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Alberta Ross, Industry Operations Branch at (703) 235–5526, e-mail: *Alberta.Ross@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, IP/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President of the United States on issues and problems related to implementing national security and emergency preparedness (NS/EP) telecommunications policy. Notice of this meeting and the partial closure thereof is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.1 *et seq.*).

At the upcoming meeting, between 2 p.m. and 2:45 p.m., the members will review and discuss the Near Term Report from the NSTAC Telecommunications and Electric Power Interdependency Task Force (TEPITF), Legislative and Regulatory Task Force (LRTF) Report and Letter and the results of the December 8, 2005, NSTAC Working Group Meeting on hurricane Katrina. This portion of the meeting will be open to the public.

Following this discussion, the committee will discuss and vote on the NSTAC Cellular Shutdown paper which outlines the process to follow after an order has been issued for shutting down cellular service. This portion of the meeting will be closed to the public.

Basis for Closure: Following the NSTAC's October 13, 2005 Conference Call on National Security and Emergency Preparedness, the NSTAC Cellular Shutdown Working Group drafted a white paper outlining considerations when ordering a shutdown and a process to be followed after an order has been issued for shutting down cellular service. At the upcoming meeting, the NSTAC will discuss and vote on the Cellular Services Shutdown Paper which outlines the above process.

The discussion and vote on the Cellular Services Shutdown Paper will occur between 2:45 p.m. and 3 p.m. and will involve sensitive information. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action. Accordingly, the relevant portion of this meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(9)(B).

Dated: January 6, 2006.

Peter M. Fonash,

Deputy Manager National Communications System.

[FR Doc. E6–349 Filed 1–12–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1619–DR]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–1619–DR), dated December 16, 2005, and related determinations.

DATES: Effective December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 16, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the State of Connecticut, resulting from severe storms and flooding from October 14–15, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Connecticut.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

Litchfield, New London, Tolland, and Windham Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–306 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1619–DR]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–1619–DR), dated December 16, 2005, and related determinations.

DATES: Effective Date: January 6, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 16, 2005:

All counties in the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–309 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 16 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 20, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Rita, from September 23–November 1, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of September 24, 2005, October 26, 2005, and November 19, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of total eligible costs, through and including June 30, 2006. Effective July 1, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–316 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1603–DR]

Louisiana; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005, and related determinations.

DATES: Effective December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 20, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Katrina, from August 29–November 1, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 29, 2005, September 1, 2005, October 22, 2005, and November 19, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of total eligible costs, through and including June 30, 2006. Effective July 1, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–317 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1622–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1622–DR), dated January 4, 2006, and related determinations.

DATES: Effective Date: January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 4, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from a severe winter storm from November 27–29, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Big Stone, Clay, Lac Qui Parle, Lincoln, Norman, Stevens, Traverse, Wilkin, and Yellow Medicine Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–308 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: December 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 21, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I determined that the damage in certain areas of the State of Mississippi resulting from Hurricane Katrina, from August 29–October 14, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 29, 2005, September 1, 2005, October 22, 2005, and November 19, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, through and including March 15, 2006. Effective March 16, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Barbour and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–315 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1621–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1621–DR), dated January 4, 2006, and related determinations.

DATES: Effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 4, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from a severe winter storm from November 27–30, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

The counties of Cass, Ransom, Richland, and Sargent for Public Assistance.

All counties and tribal reservations within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–307 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1613–DR]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1613–DR), dated November 10, 2005, and related determinations.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 10, 2005:

Adjuntas, Cayey, Guayanilla, Jayuya, and Orocovis Municipalities for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–311 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1620–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1620–DR), dated December 20, 2005, and related determinations.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 20, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from a severe winter storm from November 27–29, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Aurora, Beadle, Bon Homme, Brookings, Brown, Charles Mix, Clark, Codington, Davison, Day, Deuel, Douglas, Edmunds, Grant, Gregory, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Marshall, Miner, Roberts, Sanborn, and Spink Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–313 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1567–DR]

Virgin Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the U.S. Virgin Islands (FEMA–1567–DR), dated October 7, 2004, and related determinations.

DATES: *Effective Date:* December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated October 7, 2004, Federal funds for the Hazard Mitigation Grant Programs are authorized at 100 percent of total eligible costs for the Virgin Islands. This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–310 Filed 1–12–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 5, 2006.

Mark R. Johnson,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 06–222 Filed 1–12–06; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Lacreek National Wildlife Refuge and Wetland Management District, Martin, SD

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for the Lacreek National Wildlife Refuge (Refuge) and Wetland Management District (WMD) is available for public review and comment. This Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act. The Draft CCP/EA describes the Service's proposal for management of the Refuge for 15 years.

DATES: Written comments must be received at the postal or electronic addresses listed below by February 13, 2006. Comments may also be submitted via electronic mail to: *linda_kelly@fws.gov.*

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA, please write to Linda Kelly, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; (303) 236–8132; fax (303) 236–4792, or Tom Koerner, Refuge Manager, Lacreek National Wildlife Refuge, 29746 Bird Road, Martin, South Dakota, 57551; (605) 685–6508; fax (605) 685–1173. The Draft CCP/EA will also be available for viewing and downloading online at *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Planning Team Leader, at the above address or at (303) 236–8132.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a CCP for the Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science; conservation; legal mandates; and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting; wildlife observation and photography; and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Background: The Refuge was established in 1935 by President Franklin D. Roosevelt through Executive Order No. 7160 "* * * as a refuge and breeding ground for migratory birds and other wildlife." The Refuge lies in the Lake Creek Valley on the northern edge of the Nebraska Sandhills and includes 16,410 acres of native sandhills, sub-irrigated meadows, impounded fresh water marshes, and tall and mixed grass prairie uplands.

The WMD was started as part of the Small Wetlands Acquisition Program, in the 1950s, to save wetlands from various threats, particularly draining. The passage of Public Law 85–585, in August of 1958, amended the Migratory Bird Hunting and Conservation Stamp Act (Duck Stamp Act) of 1934, allowing for the acquisition of Waterfowl Production Areas and Easements for Waterfowl Management Rights (easements). The WMD is located in Stanley, Todd, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Fall River, Haakon, Custer, Pennington, Bennett, and Butte counties.

Significant issues addressed in the Draft CCP/EA include: habitat and wildlife management; visitor services; cultural resources; and partnerships. The Service developed three alternatives for management of the Refuge: Alternative A—No Action; Alternative B—Integrated Restoration (Proposed Action); Alternative C—Comprehensive Grassland Restoration. All three alternatives outline specific management objectives and strategies related to wildlife and habitat management, visitor services, cultural resources, and partnerships.

Alternative A—Current Management (No Action): Under this alternative, management activity being conducted by the Service would remain the same. The Service would not develop any new management, restoration, or education programs at the Refuge. Current habitat

and wildlife practices benefiting migratory species and other wildlife would not be expanded or changed. The staff would perform limited, issue-driven research and only monitor long-term vegetation change. No new species management would be initiated, including black-tailed prairie dogs. No new funding or staff levels would occur, and programs would follow the same direction, emphasis, and intensity as they do at present. The staff would continue to manage the WMD through monitoring and enforcing easements.

Alternative B—Integrated Restoration (Proposed Action): This alternative is the proposed action for the Refuge and WMD Draft CCP/EA. Through an integrated restoration approach, the Refuge would strive to restore ecological processes and achieve habitat conditions that require reduced management over time while recognizing the place of the Refuge in the overall landscape and community. An emphasis on monitoring the effects of habitat management practices and use of the research results to direct ongoing restoration would be a priority. Current levels of priority public uses and activity would increase. New species management would be initiated for black-tailed prairie dogs to facilitate prairie restoration efforts and reduce damage to adjacent private lands. The staff would continue to manage the WMD through monitoring and enforcement of easements.

Alternative C—Comprehensive Grassland Restoration: Under this alternative, the Refuge staff would focus management on restoration of grassland habitat and its associated species. Current levels of priority wildlife-dependent public uses would increase with educational priorities placed on habitat restoration. Research activities would focus on management practices on targeted grassland species. No new species management would be initiated, including black-tailed prairie dogs. The staff would continue to manage the WMD through monitoring and enforcement of easements.

The review and comment period is 30 calendar days commencing with publication of this Notice of Availability in the **Federal Register**. After the review and comment period for this Draft CCP/EA, all comments will be analyzed and considered by the Service. All comments received from individuals on the Draft CCP/EA become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and other Service and Departmental policies and procedures.

Dated: November 28, 2005.

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, CO.

[FR Doc. E6–302 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received by February 13, 2006.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027.

Availability of Documents: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 20 days of the date of publication of this notice to Kris Olsen, by mail (see **ADDRESSES**) or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: TE–115137, Kitty Roberts, National Park Service, Glen Canyon National Recreation Area, Page, Arizona. The applicant requests a permit to display Bonytails (*Gila elegans*), Colorado pikeminnows (*Ptychocheilus lucius*), Humpback chubs (*Gila cypha*), and Razorback suckers (*Xyrauchen texanus*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–038221, Mark Peyton, Central Nebraska Public Power and Irrigation District, Gothenburg, Nebraska. The applicant requests a renewed permit to take American burying beetles (*Nicrophorus americanus*) and Interior least terns (*Sterna antillarum*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–038970, Bill Krise, U.S. Fish and Wildlife Service, Bozeman Fish Technology Center, Bozeman, Montana. The applicant requests a renewed permit to take Pallid sturgeons (*Scaphirhynchus albus*) and June suckers (*Chasmistes liorus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–039100, Rockford Plettner, Nebraska Public Power District, Columbus, Nebraska. The applicant requests a renewed permit to take Interior least terns (*Sterna antillarum athalassos*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–040241, Roger Boyd, Baker University, Baldwin City, Kansas. The applicant requests a renewed permit to take Interior least terns (*Sterna antillarum*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–040242, Harold Tyus, University of Colorado, Boulder, Colorado. The applicant requests a renewed permit to take Bonytails (*Gila elegans*), Colorado pikeminnows (*Ptychocheilus lucius*), Humpback chubs (*Gila cypha*), and Razorback suckers (*Xyrauchen texanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–040748, Randy Barker, Cheyenne Mountain Zoo, Colorado Springs, Colorado. The applicant requests a renewed permit to display Black-footed ferrets (*Mustela nigripes*) and Wyoming toads (*Bufo baxteri*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–044780, Peter Smith, Smith Environmental, Broomfield, Colorado. The applicant requests a renewed permit to take Southwestern willow flycatchers (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–044836, Melvin Coonrod, Environmental Industrial Services, Helper, Utah. The applicant requests a renewed permit to take Southwestern willow flycatchers (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–047288, David Peitz, National Park Service, Republic, Missouri. The applicant requests a renewed permit to take Topeka shiners (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–047381, Jim Friedley, Bureau of Indian Affairs, Ignacia, Colorado. The applicant requests a renewed permit to take Southwestern willow flycatchers (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–047529, Stan Johnson, Colorado Division of Wildlife, Grand Junction, Colorado. The applicant requests a renewed permit to display Bonytails (*Gila elegans*), Colorado pikeminnows (*Ptychocheilus lucius*), Humpback chubs (*Gila cypha*), and Razorback suckers (*Xyrauchen texanus*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–049748, Todd Crowl, Utah State University, Logan, Utah. The applicant requests a renewed permit to take June suckers (*Chasmistes liorus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: TE–051814, Dan Miller, Bramble Park Zoo, Watertown, South Dakota. The applicant requests a renewed permit to display Black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–051835, Randy Riches, San Diego Wild Animal Park, Escondido, California. The applicant requests a renewed permit to display Black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–051845, Rene Hodgekin, Zoo Montana, Billings, Montana. The applicant requests a renewed permit to display Black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: TE–051847, Richard Lattis, Wildlife Conservation Center, Central Park Zoo, New York, New York. The applicant requests a renewed permit to take Wyoming toads (*Bufo baxteri*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: December 27, 2005.

Mary G. Henry,

Acting Regional Director, Denver, Colorado.

[FR Doc. E6–304 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take of Threatened Species for the Livermore County Landowners Group, Larimer County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the following permits.

ADDRESSES: Additional information on these permit actions may be requested from the U.S. Fish and Wildlife Service Regional Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486.

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, Division of Endangered Species, (303) 236–4258.

SUPPLEMENTARY INFORMATION: On January 13, 2004, the Service published a notice in the **Federal Register** (69 FR 1998) of receipt of an application from the Livermore Area Landowners Group, The Nature Conservancy, and the State of Colorado for permits to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, Preble's meadow jumping mouse (*Zapus hudsonius preblei*), under the terms of the Livermore Area Habitat Conservation Plan.

Notice is hereby given that on November 29, 2005, as authorized by the provisions of the Endangered Species Act, the Service issued permits to Al Johnson of the Livermore Area Landowners Group (TE–079479–0) and The Nature Conservancy (TE–115609–0) with certain conditions set forth therein. The permits were granted only after the Service determined that they were applied for in good faith, that granting the permits will not be to the disadvantage of the threatened species, and that the covered activities will be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Dated: December 20, 2005.

Richard A. Coleman,

Acting Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–301 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Incidental Take Permits for Two Beachfront Developments in Escambia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Searenity Development, Inc. and Retreat Investments, Inc. (Applicants) collectively request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The applicants anticipate taking Perdido Key beach mice (*Peromyscus polionotus trissyllepsis*) incidental to developing, constructing, and occupying two beachfront condominium complexes on Perdido Key in Escambia County, Florida (Projects).

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of both Projects to the Perdido Key beach mouse. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of a habitat conservation plan (HCP) and an environmental assessment (EA) for the ITP applications. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the ITP applications, EA, and HCP should be sent to our Regional Office (see **ADDRESSES**) and should be received on or before March 14, 2006.

ADDRESSES: Persons wishing to review the applications, HCP, and EA may obtain a copy by writing the Fish and Wildlife Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit numbers TE–103097–0, Searenity and TE–103099–0, Retreat in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875

Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits); or Field Supervisor, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–4144, facsimile: 404/679–7081; or Lorna Patrick, Field Office Project Manager, (see **ADDRESSES** above), at 850/769–0552, ext. 229.

SUPPLEMENTARY INFORMATION: We announce applications for ITPs and the availability of the HCP and an EA. The EA is an assessment of likely environmental impacts associated with these Projects. Copies of these documents may be obtained by making a request, in writing, to the Regional Office (see **ADDRESSES**). This notice is provided pursuant to section 10 of the Act and NEA regulations at 40–CFR 1506.6.

We specifically request information, views, and opinions from the public via this notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the EA. Further, we specifically solicit information regarding the adequacy of the HCP as measures against our ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE–103097–0, Searenity, and TE–103099–0, Retreat, in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *aaron_valenta@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed in (see **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The areas encompassed under the ITP applications include two individual properties, Searenity and Retreat, consisting of 1.25 and 1.30 acres, respectively, each covering 100 feet along the beachfront of the Gulf of Mexico. The proposed Projects are located on the western portion of Perdido Key, a 16.9 mile barrier island. Perdido Key constitutes the entire historic range of the Perdido Key beach mouse.

The Perdido Key beach mouse was listed as endangered species under the Act in 1985 (50 FR 23872). The mouse is also listed as an endangered species by the State of Florida. Critical habitat was designated for the Perdido Key beach mouse at the time of listing (50 CFR 17.95). On December 15, 2005, we published a proposed revision of critical habitat for the Perdido Key beach mouse and Choctawhatchee beach mouse, and a proposed critical habitat designation for the St. Andrew beach mouse (70 FR 74425).

The Perdido Key beach mouse is one of eight species of the old-field mouse that occupy coastal rather than inland areas and are referred to as beach mice. It is one of five subspecies of beach mice endemic to the Gulf coast of Alabama and northwestern Florida. Two other extant subspecies of beach mouse and one extinct subspecies are known from the Atlantic coast of Florida. The Perdido Key beach mouse, like other beach mouse subspecies, spends its entire life within the coastal beach and dune ecosystem.

Beach mouse habitat consists of a mix of interconnected habitats including primary, secondary, and scrub dunes including interdunal areas. Beach mice are nocturnal and dig burrows within the dune system where vegetation provides cover. They forage for food throughout the dune system feeding primarily on seeds and fruits of dune plants including bluestem (*Schizachyrium maritimum*), sea oats (*Uniola paniculata*), and evening primrose (*Oenothera humifusa*). Insects are also an important component of their diet.

Beach mice along the Gulf Coasts of Florida and Alabama generally live about nine months and become mature between 25 and 35 days. Beach mice are monogamous, pairing for life. Gestation averages 24 days and the average litter size is three to four pups. Peak breeding season for beach mice is in autumn and winter, declining in spring, and falling to low levels in summer. In essence, mature female beach mice can produce a litter every month and live about eight months.

The EA considers the environmental consequences of two alternatives and the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicants. The HCP would provide for: (1) Minimizing the footprint of both developments; (2) restoring, preserving, and maintaining onsite beach mouse habitat at both projects; (3) incorporating requirements in the operation of both condominium facilities that provide for the conservation of the beach mouse; (4) monitoring the status of the beach mouse at both projects post-construction; (5) donating funds initially and on an annual basis to Perdido Key beach mouse conservation efforts, (6) including conservation measures to protect nesting sea turtles and non-breeding piping plover, and (7) funding the mitigation measures.

Several subspecies of beach mice have been listed as endangered species primarily because of the fragmentation of habitat, adverse alteration and loss of habitat due to coastal development. The threat of development-related habitat loss continues to increase. Other factors contributing to the Perdido Key beach mouse's status include low population numbers, predation or competition by animals related to human development (cats and house mice), and the existing strength or lack of regulations regarding coastal development.

We will evaluate the HCP and any comments submitted during our determination of whether the applications meet the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITPs will be issued for the incidental take of the Perdido Key beach mouse. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Dated: December 20, 2005.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–305 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Certificate of Degree of Indian or Alaska Native Blood Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed agency information collection activities; comment request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from persons seeking proof of American Indian or Alaska Native blood, as required by the Paperwork Reduction Act. The information collected under OMB Control Number 1076–0153 will be used to establish that the applicants meet requirements for official recognition as an American Indian or Alaska native for purposes of eligibility determination and participation in programs administered through the U.S. Bureau of Indian Affairs.

DATES: Submit comments on or before March 14, 2006.

ADDRESSES: Written comments can be sent to Ms. Carolyn Newman, Tribal Enrollment Specialist, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Mail Stop: 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Newman, Tribal Enrollment Specialist, 202–513–7641.

SUPPLEMENTARY INFORMATION: This collection was originally approved and assigned OMB Control No. 1076–0153 when it was submitted with a proposed rulemaking, 25 CFR Part 70, which was published in the **Federal Register** on April 18, 2000 (66 FR 20775). The proposed rulemaking has not been finalized due to various reasons. We received numerous negative comments from individuals and Indian tribal governments. We, therefore, are rewriting the proposed rule. The Bureau of Indian Affairs, through the development of the proposed rule, is attempting to bring its decision-making procedures regarding the issuance of CDIB forms in line with the Administrative Procedures Act, 5 U.S.C. 553, as mandated by section 552, and as directed in the 1986 decision of the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals, U.S. Department of the Interior, in *Morgan Underwood, Sr.* v. *Deputy Assistant Secretary—Indian Affairs (Operations)*, 93 I.D. 13, 11 IBIA 3 (IBIA, January 31, 1986). However, there is legal support for the information collection in that currently existing Federal laws and regulations require some form of proof of Indian blood for various purposes, including ownership of lands held in trust by the United States for benefit of Indian landowners who are members of federally-recognized Indian tribes (including Alaska Native villages), especially at those locations where the Indian tribe or Alaska native village has minimum Indian blood degree requirements for membership.

The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as Control No. 1076–0153, and it expires 7/31/2006. The response is voluntary to obtain or retain a benefit.

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during the hours of 8 a.m. to 4:30 p.m., EST, Monday through Friday except for legal holidays. If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Information Collection Abstract

OMB control number: 1076–0153.

Type of review: Renewal.

Title: 25 CFR 70, Request for Certificate of Degree of Indian or Alaska Native Blood.

Brief description of collection: To establish that individual Indians may be eligible to receive program services based upon their status and/or degree of Indian or Alaska Native blood.

Affected Entities: Individual Indian Applicants.

Estimated number of respondents: 154,980.

Estimated time per response: 1.5.

Number of Annual Responses: 154,980.

Total annual burden hours: 232,470 hours.

Dated: December 27, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–319 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for renewal.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Bureau of Indian Affairs is submitting an information collection to the Office of Management and Budget (OMB) for renewal. The collection concerns the Application for admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute. We are requesting a renewal of clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before February 13, 2006.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–6566 or you may send an e-mail to *OIRA_DOCKET@omb.eop.gov.*

Please send copies of comments to the Office of Indian Education Programs, 1849 C Street NW., Mail Stop 3609–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James Redman, (202) 208–4397.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs is providing the admission forms for Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute for review and comment. These admission forms are used in

determining program eligibility of American Indian and Alaska Native students for educational services. These forms are authorized pursuant to Blood Quantum Act, Public Law 99–228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

A 60-day notice requesting comments was published on July 11, 2005 (70 FR 39787). There were no comments received regarding that notice. You are invited to comment on the following items to the Desk Officer at OMB at the citation in **ADDRESSES** section:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB Control Number: 1076–0114.

Type of Review: Renewal.

Brief Description of Collection: These eligibility application forms are necessary to determine a student's eligibility for educational services.

Respondents: Students attending, or seeking admission to, Haskell Indian Nations University (HINU) and to Southwestern Indian Polytechnic Institute (SIPI).

Number of Respondents: 3,943.

Estimated Time per Response: Approximately 30 minutes per application for SIPI, and 40 minutes per application for HINU.

Frequency of Response: At the time of enrollment.

Total Annual Burden to Respondents: 2,214 hours.

Filing fee: $10 per application for HINU; no fee for SIPI.

Dated: December 29, 2005

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–337 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Coeur d'Alene Field Office, Idaho, Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Coeur d'Alene Field Office.

DATES: To assure that they will be considered, BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities through public notices, news media released, and/or mailings, and on the BLM Web site (*http://www.blm.gov/rmp/id/cda/*).

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

- E-mail: *ID_CDA_RMP@blm.gov.*
- Mail: BLM Coeur d'Alene Field Office, ATTN: RMP, 1808 North Third Street, Coeur d'Alene, ID 83814–3407.
- Fax: (208) 769–5050.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Scott Pavey at the Coeur d'Alene Field Office (see above address), telephone (208) 769–5059.

SUPPLEMENTARY INFORMATION: A copy of the Draft RMP/EIS is available for review via the Internet Web site at *http://www.blm.gov/rmp/id/cda/.* You may also obtain a copy on CD–ROM, or paper copy at the BLM Coeur d'Alene Field Office at the address listed above, or by contacting Scott Pavey at (208) 769–5059.

The planning area covers approximately 96,770 acres of public lands within the following Idaho Counties: Benewah, Bonner, Boundary, Kootenai, and Shoshone. The RMP will provide future broad-scale management direction for use and protection of resources managed by the Coeur d'Alene Field Office. The Draft RMP/EIS was developed through a collaborative planning process and considers four alternatives. The primary issues addressed include: recreational travel management, management of forest products and protection of other resources, adjustments to Federal land ownership, invasive plants, protection of property from wildfire, and protection and restoration of watersheds and riparian areas.

The preferred alternative proposes designation of five areas of critical environmental concern (ACECs), four of which would become Research Natural Areas (RNAs): Hideaway Islands RNA—76 acres (existing); Lund Creek RNA—3,206 acres (2,905 acres existing); Farnham Forest RNA—33 acres; Windy Bay RNA—16 acres; and Pulaski Tunnel ACEC—27 acres. The preferred alternative specifies a no surface occupancy stipulation on future mineral leases within all ACECs/RNAs. Additionally, BLM would recommend Pulaski Tunnel ACEC for withdrawal from the mining laws. All of the RNAs would be designated as right-of-way exclusion areas and would have restrictions for vegetation treatments and timber harvests. The Farnham Forest RNA would be closed to motorized vehicles. Motorized use in all other areas would be limited to designated roads and trails.

Sixteen other ACECs were considered under other alternatives, but were not included in the preferred alternative: Constitution Mine and Millsite ACEC—6 acres; Gamlin Lake ACEC—59 acres; Hecla-Star Tailings Piles ACEC—22 acres; Killarney Lake ACEC—69 acres; Kootenai River Front ACEC—533 acres; Liberal King Millsite ACEC—2 acres; Little North Fork Clearwater River ACEC—9,592 acres; Morton Slough ACEC—119 acres; Mother Load Mine ACEC—0.8 acres; Nabob Millsite

ACEC—8 acres; Rex Millsite Tailings Pile ACEC—6 acres; Rochat Divide ACEC—11,653 acres; Sidney Mine and Millsite ACEC—6 acres; Wallace Landfill ACEC—0.3 acres; We-Like Mine ACEC—0.3 acres; Wolf Lodge Bay ACEC—1,094 acres. Restrictions on use of public lands within these areas would vary, depending on the alternative and the values identified for protection, but would include limitations on mining, off-highway vehicle use, and vegetation treatments.

The preferred alternative also recommends four suitable segments of river for inclusion in the National Wild and Scenic River system: Little North Fork Clearwater River—2.5 miles wild classification and 1.1 miles recreation classification; Lost Lake Creek—3.0 miles wild classification and 0.3 miles scenic classification; Little Lost Lake Creek—3.0 miles wild classification; and Lund Creek—3.9 miles wild classification. A segment of the Kootenai River (14 miles) was found eligible, but under the preferred alternative, suitability determination would be deferred until the Idaho Panhandle National Forest (the primary land owner along this segment) makes a suitability determination on adjacent segments.

Dated: November 16, 2005.

Eric R. Thomson,

Coeur d'Alene Field Office Manager.

[FR Doc. 06–286 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–06–1310–DB]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Jonah Infill Drilling Project, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposal to further develop the Jonah natural gas field through infill drilling in Sublette County, Wyoming.

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, and local government agencies, and to interested parties.

An electronic copy of the FEIS may be viewed or downloaded from the BLM Web site at *http://www.wy.blm.gov/nepa/nepadocs.htm*. Copies of the FEIS are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stiewig, Project Manager, BLM Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941. Mr. Stiewig may also be reached at (307) 367–5363.

SUPPLEMENTARY INFORMATION: In response to a proposal submitted by EnCana Oil and Gas (USA), Inc. (EnCana), BP America Production Company (BP), and other companies, referred to collectively as the Companies, the BLM published in the March 13, 2003, **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). The Draft Environmental Impact Statement was published in February 2005. On April 14, 2005, the BLM notified the public of its intent to prepare supplemental air quality information and that comments on the DEIS Air Quality information would continue to be accepted until the supplemental information was completed. On August 9, 2005, the BLM announced the availability of the JIDP DEIS supplemental air quality information and summary and a 60 day review period during which BLM would accept comments.

The Jonah Infill Drilling Project Area (JIDPA) covers approximately 30,500 acres in Townships 28 and 29 North, Ranges 107, 108, and 109 West, 6th Principal Meridian, approximately 32 miles southeast of Pinedale, Sublette County, Wyoming. The FEIS analyzes a proposal by the Companies to infill drill and develop Federal natural gas resources in an area known as the Jonah Field. The Companies' proposal includes drilling 3,100 additional natural gas wells and constructing associated ancillary transportation and transmission facilities within the JIDPA. The proposed life of the project (LOP) is approximately 76 years, with the majority of drilling and development activities to occur within the first 12 years following approval of the BLM Record of Decision (ROD). The total 30,500 acre project area comprises approximately 28,580 acres of Federal surface and mineral estate administered by the BLM, 1,280 acres of State of Wyoming surface and mineral, and 640 acres of split estate (private surface/Federal mineral) lands. To offset expected impacts from closely spaced infill drilling, EnCana has volunteered varying levels of off-site compensatory mitigation based on the level of new surface disturbance authorized in the ROD for this project.

The FEIS describes in detail and analyzes the impacts of five alternatives, including the No Action Alternative and the Companies' Proposed Action. The following is a summary of the alternatives:

1. *Proposed Action*—Up to 3100 new gas wells would be drilled and developed, with associated ancillary facilities, on up to 16,200 acres of new surface disturbance. Bottom-hole well spacing is expected to range from 16 wells per 640-acre section (40-acre spacing) to 128 wells per section (5-acre well spacing). Additionally, compensatory (off-site) mitigation has been volunteered by EnCana.

2. *No Action Alternative*—The no action alternative means that the project as proposed would not be approved.

3. *Alternative A*—This alternative proposes to maximize economic recovery of gas resources. New surface disturbance would be comparable to the Proposed Action, but many of the existing BLM Conditions of Approval, stipulations and mitigations would be exempted.

4. *Alternative B*—This alternative proposes to minimize surface disturbance by requiring directional drilling from existing well pads. This alternative requires expansion of existing well pads but results in the least amount of new surface disturbance while still providing for a higher level of resource recovery.

5. *Alternative C (Agency Preferred)*—This alternative proposes to achieve high levels of natural gas recovery approaching that of the Proposed Action, while minimizing resource impacts by the use of outcome-based performance objectives, mitigation, and Best Management Practices. This alternative manages surface disturbance on a field-wide level, not to exceed 46 percent at any given time. Once interim reclamation meets BLM standards, credit would be applied to the allowable surface disturbance acreage limits. Maximum cumulative surface disturbance or number of wells would not exceed those of the proposed action.

Features common to all action alternatives: The Companies would agree to some "operator committed" mitigation measures when operating on Federal surface lands.

DATES: The FEIS will be available for review for 30 calendar days following the date that the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. A Record of Decision (ROD) will be prepared following the close of the 30 day review period.

How To Submit Comments

Comments may be mailed directly or delivered to the BLM at: Jonah Infill Drilling Project FEIS, Project Manager, Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, PO Box 768, Pinedale, Wyoming 82941.

You may mail comments electronically to *WYMail_Jonah_Infill@blm.gov*. Please put "Attention: Mike Stiewig" in the subject line.

To receive full consideration by the BLM all FEIS comment submittals must include the commenter's name and street address.

Our practice is to make comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during the business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address, or both, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments.

Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: December 1, 2005.

Robert A. Bennett,

State Director.

[FR Doc. 06–283 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1610–DT]

Notice of Availability of the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for McGregor Range, Otero County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) announces the availability of the Proposed Resource Management Plan Amendment/Final Environmental Impact Statement (PRMPA/FEIS) for McGregor Range in Otero County, New Mexico. The planning area encompasses approximately 608,000 surface acres of public land withdrawn by the Department of Army and jointly managed by the Las Cruces District Office and Fort Bliss Texas. It is located in south central Otero County in southern New Mexico. The BLM has and will continue to work closely with all interested parties to identify management decisions that are best suited to the needs of the public. Final decisions will supersede those in the previous RMPA for McGregor Range that was completed in 1990, and will provide direction for management of the resources and public uses of the withdrawn public land.

DATES: The PRMPA/FEIS for McGregor Range will be available for a 30-day protest period in accordance with BLM's land use planning regulations (43 CFR 1610.5–2). Protests must be filed within 30 days of the date the Environmental Protection Agency publishes its notice of availability of the FEIS.

ADDRESSES: Written protests must be submitted to: Director, Bureau of Land Management, Attention: Ms. Brenda Hudgens-Williams, Protests Coordinator, WO–210, P.O. Box 66538, Washington, DC 20035.

Alternatively, and to expedite delivery, you may send your protest using an express delivery service to: Director, Bureau of Land Management, Attention: Ms. Brenda Hudgens-Williams, Protests Coordinator, WO–210, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005 or by telephone (505) 525–4377; Fax (505) 525–4412.

SUPPLEMENTARY INFORMATION: This land use plan amendment focuses on the principle of multiple-use management and sustained yield as prescribed by Section 202 of FLPMA. The Proposed RMPA/FEIS considers and analyzes four alternatives. These alternatives have been developed based on extensive public input following scoping (July 2001), review and comment on the Draft RMPA/EIS (January 2005–April 2005), and numerous meetings with local governments, interested groups, local citizens, and the New Mexico Resource Advisory Council. Alternative A is the proposed plan and provides for a balance of resource use and conservation.

The BLM Planning Regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be filed within 30 days of the date the Environmental Protection Agency publishes its notice of availability of the FEIS. Specific dates of the protest period will be announced through the local news media and the following BLM Web site: *http://www.blm.gov/nhp/spotlight/state_info/planning.htm*. To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, we suggest that you send your protest by certified mail, return receipt requested. You are also encouraged, but not required, to forward a copy of your protest to the Las Cruces District Manager at 1800 Marquess, Las Cruces, New Mexico 88005. To be considered complete, your protest must contain (at a minimum) the following information:

(1) Name, mailing address, telephone number and the affected interest of the person filing the protest(s).

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the proposed plan being protested. To the extent possible, reference specific pages, paragraphs, and sections of the document.

(4) A copy of all your documents addressing the issue or issues which were discussed with the BLM for the record.

(5) A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Document all relevant facts, as thoroughly as possible. Disagreement, by itself, with a proposed decision or with how the data are used, or unsupported allegations of violations of regulation, law, legal precedents, or other guidance, will not meet the requirement of the regulations.

Freedom of Information Act Considerations: Public submissions for this planning effort, including names and street addresses or respondents, will be available for public review in their entirety after the protest period closes at the Las Cruces District Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish for BLM to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of the submission. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals representing organizations or businesses, will be made available for public inspection in their entirety.

Documents pertinent to this proposal may be examined at the Las Cruces District Office in Las Cruces, New Mexico during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. A hard copy of the document may be requested from the BLM Las Cruces District Office at the address and phone number above. After resolution of any protests an approved RMPA/Record of Decision will be prepared and is expected to be available in early 2006.

Dated: October 17, 2005.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. 06–285 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–110–1430–EU; IDI–34411, IDI–34544, IDI–34545, IDI–35031, IDI–35035]

Notice of Intent To Prepare an Amendment to the Cascade Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 et seq.) the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan (RMP) amendment to address offering the sale of public lands within Ada, Canyon, Payette, and Valley Counties, Idaho not currently identified for disposal.

DATES: The public scoping period for the proposal will commence with publication of this notice. Comments regarding this proposal must be submitted in writing to the address below within 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Comments should be addressed to Rosemary Thomas, Four Rivers Field Manager, Boise District, Bureau of Land Management, 3948 Development Road, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Effie Schultsmeier, Four Rivers Realty Specialist, at the Boise District Office, 208–384–3357. Documents pertinent to this proposal may be examined at the Boise District Office.

SUPPLEMENTARY INFORMATION: The proposed RMP amendment and land sales involve approximately 2,056 acres of public land north of Star in Ada County, around Pickles Butte and north of Lake Lowell in Canyon County, east of Payette in Payette County, and within the city limits of Cascade in Valley County. The purpose of a portion of the sales in Canyon and Payette Counties is to provide land for purchase by the respective counties for important public objectives including expansion of the landfill at Pickles Butte, further development at Clay Peak Motorcycle Park, and various other recreation and public use opportunities. The other lands will be evaluated for sale as the tracts are difficult and uneconomic to manage as part of the public lands, some of which will serve to expand communities or provide economic development opportunities. As part of the RMP amendment, an Environmental Assessment (EA) will be prepared to analyze designation of the public land for disposal and sale of the land. Approximately 3,175 acres of additional lands which are currently identified for disposal in the Cascade RMP will also be evaluated for disposal via sale. Comments will be accepted throughout the RMP amendment and EA process. Prior to a sale offer, a Notice of Realty Action will be prepared and published in accordance with 43 CFR 2711.1–2. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. Comments, including names and street addresses of respondents, will be available for public review at the Boise District Office during regular business hours 8 a.m. to 4:30 p.m. Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment.

Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Rosemary Thomas,

Four Rivers Field Manager.

[FR Doc. E6–343 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents; prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA),

announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), for oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Virgin Offshore U.S.A., Inc. Structure Removal SEA ES/SR 05–114, 05–115.	East Cameron, Block 2, Lease OCS–G 10605, located 5 miles from the nearest Louisiana shoreline.	7/1/2005
Bois d'Arc Offshore, LTD, Structure Removal SEA ES/SR 05–116.	Ship Shoal, Block 114, Lease OCS–00064, located 18 miles from the nearest Louisiana shoreline.	7/1/2005
Chevron U.S.A., Inc., Structure Removal SEA ES/SR 05–117, 05–118, 05–119.	South Marsh Island, Blocks 212 & 218, Lease OCS–00310, located 10 miles from the nearest Louisiana shoreline.	7/12/2005
Virgin Offshore U.S.A., Inc., Structure Removal SEA ES/SR 05–044A.	West Cameron, Block 151, Lease OCS–G 17764, located 21 miles from the nearest Louisiana shoreline.	7/15/2005
Virgin Offshore U.S.A., Inc., Structure Removal SEA ES/SR 05–047A.	West Cameron, Block 151, Lease OCS–G 17764, located 21 miles from the nearest Louisiana shoreline.	7/15/2005
Apache Corporation, Structure Removal SEA ES/SR 05–106 ..	South Marsh Island (South), Block 161, Lease OCS–G 04809, located 85 miles from the nearest Louisiana shoreline.	7/26/2005
W & T Offshore, Inc., Structure Removal SEA ES/SR 05–045	Vermilion (South), Block 111, Lease OCS–G 06685, located 108 miles from the nearest Louisiana shoreline.	7/27/2005
Millennium Offshore Group, Structure Removal SEA ES/SR 05–124.	Main Pass, Block 216, Lease OCS–G 13971, located 52 miles from the nearest Louisiana shoreline.	7/29/2005
Forest Oil Corporation, Structure Removal SEA ES/SR 05–128, 94–11A.	West Cameron, Block 172, Lease OCS–G 01998, located 25 miles from the nearest Louisiana shoreline.	7/29/2005
Millennium Offshore Group, Structure Removal SEA ES/SR 05–122.	East Cameron, Block 189, Lease OCS–G 08418, located 40 miles from the nearest Louisiana shoreline.	8/1/2005
Sterling Energy, Inc., Structure Removal SEA ES/SR 05–127 ..	High Island, Block A83, Lease OCS–G 07300, located 45 miles from the nearest Texas shoreline.	8/3/2005
ExxonMobil Production Company SEA P–10151	Mobile, Block 823, Lease OCS–G, located 5.8 miles from the nearest Alabama shoreline.	8/5/2005
Anadarko E & P Company, LP, Structure Removal SEA ES/SR 05–129.	South Timbalier, Block 170, Lease OCS–G 04237, located 39 miles from the nearest Louisiana shoreline.	8/5/2005
Millennium Offshore Group, Inc., Structure Removal SEA ES/SR 05–131, 05–132.	East Cameron, Block 192, Lease OCS–G 08650, located 58 miles from the nearest Louisiana shoreline.	8/8/2005
Millennium Offshore Group, Inc., Structure Removal SEA ES/SR 05–133.	High Island, Block 128, Lease OCS–G 05009, located 30 miles from the nearest Louisiana shoreline.	8/8/2005
Millennium Offshore Group, Inc., Structure Removal SEA ES/SR 05–123.	Ship Shoal, Block 250, Lease OCS–G 19815, located 43 miles from the nearest Louisiana shoreline.	8/8/2005
BP America Production Company, Structure Removal SEA ES/SR 05–134, 93–59A, 93–61A.	West Cameron, Blocks 71 & 102, Leases OCS–00244 & 00247, located 15 miles from the nearest Louisiana shoreline.	8/12/2005
Forest Oil Corporation, Structure Removal SEA ES/SR 05–125	High Island, Block A416, Lease OCS–G 15794, located 75 miles from the nearest Texas shoreline.	8/15/2005
BP America Production Company, Structure Removal SEA ES/SR 05–135, 05–136, 05–137, 05–138.	West Cameron, Blocks 110 & 111, Leases OCS 00081 & 00082, respectively, located 16 miles from the nearest Louisiana shoreline.	8/16/2005
GOM Shelf, LLC, Structure Removal SEA ES/SR 05–109	Main Pass (South), Block 296, Lease OCS–G 01673, located 30 miles from the nearest Louisiana shoreline.	8/26/2005

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 28, 2005.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E6–361 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 6, 2006.

The Department of Labor (DOL) has submitted the following public

information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Construction Recordkeeping and Reporting.

OMB Number: 1215–0166.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Number of Respondents: 2,200.

Annual Reponses: 2,200.

Average Response Time: 20 minutes.

Total Annual Burden Hours: 733.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $924.00.

Description: The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis and to certain survivors of the miner. If a beneficiary is incapable of handling their affairs, the person or institution responsible for their care is required to apply to receive the benefit payments on the beneficiary's behalf. The CM–910 is the form completed by the representative payee applicants. The payee applicant completes the form and mails it for evaluation to the district office that has jurisdiction over the beneficiary's claim file. Regulations 20 CFR 725.504–513 require the collection of this information.

Dated: January 10, 2005.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 06–351 Filed 1–12–06; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 6, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Part 46 Training Plans and Records.

OMB Number: 1219–0131.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 6,344.

Estimated Annual Responses: 1,097,794.

Estimated Average Response Time: Varies by task and mine size.

Estimated Annual Burden Hours: 299,419.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $496,795.

Description: In order to help ensure safe and healthful working conditions, 30 CFR Part 46 requires mine operators to provide various types of training and maintain records pertaining to the training they provide to miners. More specifically, mine operators are required to perform the following tasks:

- Section 46.3—Develop and implement a written training plan.
- Section 46.5—Provide new miner training.
- Section 46.6—Provide newly hired experienced miner training.
- Section 46.7—Provide new task training.
- Section 46.8—Provide annual refresher training.
- Section 46.9—Maintain records of training.
- Section 46.11—Provide site-specific hazard awareness training.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–340 Filed 1–12–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

International (application review): January 27, 2006 from Room 514. This meeting, which will be by teleconference from 1 p.m. to 2 p.m., will be closed.

Partnership/National Services (application review): February 7, 2006 from Room 710. This meeting, which will be by teleconference from 3 p.m. to 4 p.m., will be open.

American Masterpieces/Visual Arts on Tour (application review): February 14, 2006 in Room 716. This meeting, from 9 a.m. to 6 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion; evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 9, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–321 Filed 1–12–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 13, 2006. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wisconsin Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctica Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2006–026

Applicant: Rudolf S. Scheltema, Department of Biology, Woods Hole Oceanographic Institute, Woods Hole, MA 02543.

Activity for Which Permit Is Requested: Introduce non-indigneous species into Antarctica. The applicant proposes to bring algal cultures of *Thalassiorira pseudomonas, Isochrysis galbana, and Duneliella teriolecta* to be used in rearing the larvae of indigenous benthic invertebrates collected in Antarctica waters. The living larvae taken from Zooplankton samples are to be reared in the ship's laboratory using the three unicellular species of algae as a food source. The study will deal with the identification of larvae and life history of benthic invertebrates in the region of the South Shetland Islands. After completion of the study the algal cultures will be disposed of by heat sterilization.

Location: South Shetland Islands region.

Dates: January 1, 2006 to March 30, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 06–339 Filed 1–12–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 2, 2006, 8:30 a.m.–5:30 p.m. and February 3, 2006, 8:30 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235 S, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8040. *mtolbert@nsf.gov.*

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Thursday, February 2, 2006

Welcome and Opening Statement by the CEOSE Chair
Introductions
Review of the CEOSE Meeting Agenda and Minutes
Topics for Discussions/Presentations/Reports:
OSTP/NSF/CEOSE Multi-Federal Agency Meeting Held December 20, 2005
CEOSE Subcommittee Activities
Institutional Transformation
Representation of Persons with Disabilities
Plans for the CEOSE Biennial Report
Discussion with NSF Director and/or Deputy Director

Friday, February 3, 2006

Opening Statement by the CEOSE Chair
Discussions/Presentations:
Subcommittee Deliberations and Reports
Report of CEOSE Liaisons to National Science Foundation Advisory Committees
Completion of Unfinished Business

Dated: January 10, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–334 Filed 1–12–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641]

Notice of Issuance of License Amendment for Release of Four 0T–10 Radiation Training Sites for Unrestricted Use; Department of the Air Force, Kirtland Air Force Base, Albuquerque, NM

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of License Amendment.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, M.S., Project Manager, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011. Telephone: (817) 276–6552; fax number: (817) 860–8188; e-mail: *rsb3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of the issuance of License Amendment 19 to Material License No. 42–23539–01AF to Department of the Air Force, to authorize the release of four OT–10 training sites at Kirtland Air Force Base, Albuquerque, New Mexico for unrestricted use. The Department of the Air Force's request for an amendment to authorize decommissioning of its four OT–10 training sites was previously notice in the **Federal Register** on June 22, 2001 (66 FR 33579) with a notice of an opportunity to request a hearing.

The Department of the Air Force provided a final radiological status survey report to demonstrate the OT–10 site meets the license termination criteria in Subpart E of 10 CFR Part 20. In addition, NRC staff conducted independent radiological measurements of soils and surfaces at the site. The NRC staff has evaluated the Department of the Air Force's request, reviewed the results of the final radiological survey, and determined that the four OT–10 training sites: TS5, TS6, TS7, and TS8, including building 28010 but excluding building 28005, meet the unrestricted use dose criteria in 10 CFR 20.1402. The Commission has concluded that the respective OT–10 training sites as specified, are suitable for release for unrestricted use.

This license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations set forth in 10 CFR Chapter 1. Accordingly, this license amendment was issued on December 12, 2005, and is effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (SER), December 2005, which documents the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the SER and accompanying documentation included in the license amendment package, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you may access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are as follows.

NRC Inspection Report, March 26, 2003	MS030850371
NRC Inspection Report, July 24, 2003	ML032050716
NRC Inspection Report, September 9, 2003	ML032521325
NRC Inspection Report, May 3, 2004	ML041250063
Safety Evaluation Report, January 2003	ML030080421
Decommissioning Plan for Site OT–10, Radiation Training Sites, Kirtland Air Force Base, New Mexico, July 2000	ML011560740
Decommissioning Plan for Site OT–10, Radiation Training Sites, Kirtland Air Force Base, New Mexico, Submitted November 2002.	ML023390060.
Final Status Survey Report for Environmental Restoration Program Site OT–10, Radiation Training Sites, Kirtland Air Force Base, New Mexico, May 2005.	ML051570099 ML051570105.
Final Safety Evaluation Report, December 2005	ML053460250.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas, this 22nd day of December, 2005.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch; Division of Nuclear Materials Safety, Region IV.

[FR Doc. 06–361 Filed 1–12–06; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) to withdraw its application dated October 14, 2003, for a proposed amendment to Renewed Facility Operating License Nos. DPR–53 and DPR–69 for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, respectively, located in Calvert County, Maryland.

The proposed amendment would have revised the Technical Specifications to change the frequency of surveillance testing for some engineered safety features components.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 25, 2003 (68 FR 66133). However, by letter dated December 19, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 14, 2003, and the licensee's letter dated December 19, 2005, which withdrew the application for the license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of January 2006.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–350 Filed 1–12–06; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2006. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2006. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.) The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2006 is 3.95 percent (*i.e.*, 85 percent of the 4.65 percent Treasury Securities Rate for December 2005).

The Pension Funding Equity Act of 2004 ("PFEA")—under which the required interest rate is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid—applies only for premium payment years beginning in 2004 or 2005. Congress is considering legislation that would extend the PFEA rate for one more year. If legislation that changes the rules for determining the required interest rate for plan years beginning in January 2006 is adopted, the PBGC will promptly publish a **Federal Register** notice with the new rate.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2005 and January 2006.

For premium payment years beginning in:	The required interest rate is:
February 2005	4.66
March 2005	4.56
April 2005	4.78
May 2005	4.72
June 2005	4.60
July 2005	4.47
August 2005	4.56
September 2005	4.61
October 2005	4.62
November 2005	4.83
December 2005	4.91
January 2006	3.95

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2006, as announced by the IRS, is 7 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4

From	Through	Interest rate (percent)
10/1/04	3/31/05	5
4/1/05	9/30/05	6
10/1/05	3/31/06	7

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 2006 (*i.e.*, the rate reported for December 15, 2005) is 7.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00
10/1/04	12/31/04	4.50
1/1/05	3/31/05	5.25
4/1/05	6/30/05	5.50
7/1/05	9/30/05	6.00
10/1/05	12/31/05	6.50
1/1/06	3/31/06	7.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of January 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–328 Filed 1–12–06; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employers Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* March 31, 2006.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 540.

(8) *Total annual responses:* 2,160.

(9) *Total annual reporting hours:* 900.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–318 Filed 1–12–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11535]

Issuer Delisting; Notice of Application of Burlington Northern Santa Fe Corporation, To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

January 6, 2006.

On December 20, 2005, Burlington Northern Santa Fe Corporation, a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") of the Issuer approved resolutions on December 8, 2005 to withdraw the Security from PCX. The Issuer stated that the Board decided to withdraw the Security from PCX because the benefits of continued listing on PCX do not outweigh the incremental cost of the listing fees and the administrative burden associated with listing on PCX. The Issuer stated that the Security is listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to list on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by complying with all applicable laws in the State of Delaware, the state in which the Issuer is incorporated, and by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Security from listing on PCX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before February 1, 2006, comment on the facts bearing upon whether the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–11535 or;

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–11535. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–253 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31528]

Issuer Delisting; Notice of Application of IAMGOLD Corporation To Withdraw Its Common Shares, No Par Value, From Listing and Registration on the American Stock Exchange LLC

January 6, 2006.

On December 13, 2005, IAMGOLD Corporation, a Canadian corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common shares, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On October 31, 2005, the Board of Directors ("Board") of the Issuer unanimously approved resolutions to withdraw the Security from listing on Amex and to list the Security on the New York Stock Exchange, Inc. ("NYSE"). The Issuer stated that the Board determined to withdraw the Security from Amex and list the Security on NYSE for the following reasons: (i) The Board believes it is in the best interest of the Issuer to list the Security on NYSE to enhance the profile of the Issuer; and (ii) in order to avoid the direct and indirect costs and the division of the market resulting from dual listing on Amex and NYSE.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in Canada, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before February 1, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–31528 or;

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–31528. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–254 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53055; File No. SR–ISE–2005–58]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 700 With Respect to the Hours of Trading in Equity Options and Narrow-Based Index Options

January 5, 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 December 27, 2005, the International Securities Exchange, Inc. ("ISE" 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules governing the hours of trading in equity options and narrow-based index

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

options. The Exchange proposes that these changes be implemented on February 1, 2006. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend ISE Rule 700 governing the hours of trading in equity options and narrow-based index options. Specifically, the ISE proposes to amend its rule to change the close of the normal trading hours in options on individual stocks and narrow-based indexes from 4:02 p.m. to 4 p.m. (New York time). After the change, the time of the close of trading in these ISE options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the ISE options. The primary exchanges generally close at 4 p.m. (New York time).

The Exchange notes that in 1997 the closing time for options on individual stocks and narrow-based index was changed from 4:10 p.m. to 4:02 p.m. (New York time). The rationale to continue trading options for some limited period of time after the close of trading on the primary markets for the underlying securities was that the extended period allowed options traders to respond to late reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes in line with the closing price of the underlying security.

However, because of improvements in the processing and reporting of transactions, the ISE believes that there often are no longer significant delays in the reporting of closing prices, and, therefore, a two minute session is no longer needed to trade options after the underlying securities close trading. Additionally, the Exchange believes that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying option. As a result, the ISE believes that it is difficult for the market to price options accurately when the underlying security is not trading.

As noted above, the Exchange also proposes to change the closing time for options on narrow-based indexes, as defined in ISE Rule 2001, because these indexes are subject to the same pricing problems as options on individual stocks. According to the ISE, a significant news announcement on one component of a narrow-based index could have a significant effect on that index. However, the Exchange is not at this time proposing to change the closing time of 4:15 p.m. for options on a broad-based index, as defined in ISE Rule 2001, because the ISE believes that it is unlikely that a significant news announcement by the issuer on one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index. Accordingly, the Exchange is also proposing to codify a 4:15 p.m. closing time for options on a broad-based index.

The Exchange notes that if it were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to confusion for options investors and broker-dealers. It is the ISE's understanding that all of the options exchanges have determined to change their respective rules to adjust the closing time in options on individual stocks and narrow-based indexes from 4:02 p.m. to 4 p.m. (New York time). The ISE further understands that the options exchanges collectively have determined that they would implement this new closing time on February 1, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE 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

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

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 at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–58 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 20549–9303.

All submissions should refer to File Number SR–ISE–2005–58. This file

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–58 and should be submitted on or before January 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–255 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53071; File No. SR–NYSE–2005–91]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Certain of the Exchange's Facility and Equipment Fees and System Processing Fees Charged to Members

January 6, 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 December 29, 2005, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 NYSE. The NYSE has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to revise certain of its Facility and Equipment Fees and System Processing Fees charged to members. The text of the proposed rule change is available on the NYSE Web site, (*http://www.nyse.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has undertaken a thorough analysis of its various fees charged to Exchange members for floor and equipment and system processing services. This analysis has taken into account the changing business models of the Exchange's members. In most cases, the Exchange's fees have not been meaningfully revised for a period of five to 15 years.

In response to this analysis, the Exchange proposes to revise its fee schedules for certain floor and equipment and system processing services. These revisions to the Exchange's fee schedules would take effect January 1, 2006 and form part of the Exchange's 2006 Price List. The proposed changes are defined by certain core objectives:

- Establish a fee structure that more accurately and equitably reflects member firms' utilization of floor and equipment and system processing services;
- Simplify the Exchange's fee schedules and make them easier to understand;
- Recognize the overall costs members incur in order to trade at the Exchange; and
- Encourage participation in the NYSE's marketplace.

The Exchange proposes to revise the pricing of trading floor services in four primary areas: Specialist Fees, Booth Fees, Clerk Badge Fees, and Usage-Based Fees.

Specialist Fees. The Exchange will charge specialist firms a new "Trading Privilege Fee" that will replace several existing Exchange fees including the Specialist Floor Fee, the Specialist Post Fee, Specialist Odd Lot Charges, and Specialist System Charges. This Trading Privilege Fee will be assessed monthly on the Exchange's specialist firms for each security, including any investment company unit ("ICU") traded,[5] and will be determined based on each security's consolidated average daily dollar volume.

The Exchange anticipates that this Trading Privilege Fee will:

- Further increase transparency and simplify Exchange fees for specialists by replacing four separate fees with one new fee;
- Position the Exchange's floor revenues to grow with potential future growth in the NYSE's new listings business;
- More closely align the Exchange's floor-related fees from specialists with the fundamental driver of their business activity; and
- Help offset the costs incurred to provide technology and other infrastructure to support specialist firms operating on the floor of the Exchange.

Booth Fees. Currently, the Exchange charges an annual fee per booth,[6] billed monthly on a pro-rated basis,[7] that is

[5] 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)(2).

[5] Includes securities and ICUs admitted to dealings on an unlisted trading privileges (UTP) basis.

[6] Booths are workspaces located around the perimeter of the trading floor where member firms and independent brokers receive orders.

[7] In its filing, the Exchange described this fee as a monthly fee. The Exchange confirmed in a telephone conference between John Carey, Assistant General Counsel, NYSE, and David L. Orlic, Attorney, Division of Market Regulation, Commission, on January 6, 2006 that the fee is in fact an annual fee billed monthly on a pro-rated basis.

determined based on the particular size and location of each booth within the Exchange's five trading rooms. Under its revised booth pricing schedule, the Exchange will charge a flat fee per booth based solely on the trading room where each booth is located. This change will allow the Exchange to simplify its price schedule by reducing the number of booth fees from several hundred to four and will enable member firms to more easily assess their booth-related floor costs. In order to further simplify the current booth pricing schedule, and to ensure that members are only charged for services actually utilized on the trading floor, the Exchange is also eliminating the minimum Floor Privilege Fee.

Clerk Badge Fees. Currently, the Exchange maintains two different rates for Telephone Clerk Tickets, depending upon the ratio of telephone clerks per booth or post space. The Exchange will now charge one flat fee per eligible person. This flat fee is intended to simplify for member firms the process of calculating the incremental cost of an individual employee on the floor and to provide greater transparency to member firms with respect to the subsidized services their employees utilize at the Exchange, such as security and subsidized cafeteria and medical services. In addition, the name of this fee is being changed from Telephone Clerk Ticket to Clerk Badge Fee to further enhance the transparency of the Exchange's price structure.

Usage-Based Fees. The Exchange is changing its fees for several usage-based services provided by the Exchange, including eBroker handheld devices, telephone lines, the Online Comparison System, and Exceptional System Messages.

- *eBroker Handheld Devices.* The Exchange currently provides its proprietary eBroker handheld device to brokers on the floor of the Exchange free of charge. The Exchange is introducing an annual charge of $5,000 per eBroker device in order to:
  - Allow the Exchange to recoup a portion of the costs incurred to develop and maintain the proprietary eBroker system;
  - Encourage competition and technological development by outside vendors in the provision of products such as handheld devices for use on the trading floor; and
  - Recognize that eBroker is not used by all brokers, thus creating an incentive for those brokers who do use it to do so efficiently.
- *Telephone Lines.* The Exchange currently charges brokers for telephone lines that originate on the floor of the Exchange and terminate at a customer site, and the Exchange does not currently charge for telephone lines that terminate at a broker's own back-office or trading room. The Exchange will now charge brokers a fee for each telephone line, regardless of where the line terminates. The Exchange believes this change in the telephone line charge will:
  - Establish a more equitable usage-based pricing structure by imposing a standard rate per telephone line, regardless of where the line terminates; and
  - Create an incentive for member firms to more efficiently use the Exchange's telephone capacity and systems.
- *Online Comparison System.* The Exchange has not revised any fees related to its Online Comparison System ("OCS") since the system was first introduced in 1989. The Exchange is revising the prices for OCS access and per-submission fees in order to:
  - Recover incremental fees to help offset OCS development and maintenance costs, which have continued to increase as a result of ongoing system improvements; and
  - Establish a more simplified and equitable usage-based fee schedule by: (i) Establishing a flat remote access fee regardless of how a member firm chooses to access the OCS system; and (ii) establishing a flat per-submission fee rather than differentiating pricing based on the size of each particular transaction, which has no bearing on the actual cost to process a submission.
- *Exceptional System Message Fee.* A new fee of $0.01 per "Exceptional System Message" will be applied. An Exceptional System Message is defined as any system [8] message, as measured by mnemonic [9] on a daily basis, that exceeds the following criteria: (i) The ratio of a mnemonic's share of the total system messages to the mnemonic's share of total executed system volume exceeds 10:1; and (ii) the mnemonic's cancelled system orders as a percentage of its total system orders exceeds 90.0%. If a mnemonic exceeds these two thresholds for a particular trading day, the Exceptional System Message fee will be applied only towards those cancelled system messages in excess of 90.0% of that mnemonic's total system orders for the day. Any fees incurred as a result of this Exceptional System Message fee will not be applied towards either the monthly dollar cap on transaction fees (which is currently set at $600,000) or the commission-based 2% cap on transaction fees. It is intended that this fee will help to compensate the Exchange for the cost of the incremental system capacity that must be readily available to accommodate trading strategies that result in significant volumes of system messages and cancellations.

[8] The relevant system is SuperDOT®, the Exchange's Designated Order Turnaround System.

[9] Mnemonics, which are alphabetical identifiers issued by the NYSE to its member firms and their customers, are required for order entry and identification purposes.

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] *See* 15 U.S.C. 78s(b)(3)(C).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–91 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 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–91 and should be submitted on or before February 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–325 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53053; File No. SR–OCC–2003–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability With Respect to Clearing Members

January 5, 2006.

I. Introduction

On November 5, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on August 18, 2004, amended [1] proposed rule change SR–OCC–2003–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on November 23, 2005.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

In its 1980 release setting forth standards for registration of clearing agencies, the Commission's Division of Market Regulation stated that it was "of the view that clearing agencies should undertake to perform their obligations with a high degree of care." [4] In its 1983 order registering nine clearing agencies, the Commission stated that it did "not believe sufficient justification exists at this time to require a unique federal standard of care for registered clearing agencies." [5] The Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions. Along this line, in its 1986 order approving a proposed rule change of the Midwest Securities Trust Company ("MSTC") to clarify the rights and liabilities of MSTC and its participants with respect to certain services, the Commission stated:

> The Act does not specify the standard of care that must be exercised by registered clearing agencies and the Commission has determined that imposition of a unique federal standard of care for registered clearing agencies is not appropriate at this time. [citing Securities Exchange Act Release No. 20221, *supra* note 6] For those reasons the Commission believes that the clearing agency standard of care and the allocation of rights and responsibilities between a clearing agency and its participants applicable to clearing agency services generally may be set by the clearing agency and its participants. The Commission believes it should review clearing agency proposed rule changes in this area on a case-by-case basis and balance the need for a high degree of clearing agency care with the effect resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds.[6]

Because standards of care represent an allocation of rights and liabilities between a clearing agency and its users, which are generally sophisticated financial entities, the Commission has continued to refrain from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their users to establish their own standards of care.[7]

With this rule change, OCC is establishing a comprehensive gross negligence standard of care and limitation of liability with respect to its clearing members. In connection with this filing, OCC has made the following representations. OCC states in its original filing that since its founding in 1973, it has performed its clearing services with an exemplary level of care. Its record of fulfilling its commitments to its clearing members for over 30 years reflects OCC's commitment to serving the best interests of its clearing members. It has comprehensive systems and operating procedures in place to ensure that its clearing functions are executed with the highest level of accuracy. In addition to its own concern for accuracy, it is subject to extensive regulatory oversight by the Commission. Furthermore, in its amendment to the filing, OCC states that (1) gross negligence is the standard of care generally used by other clearing agencies such as the Fixed Income Clearing Corporation, (2) the decision to apply a gross negligence standard of care to OCC is a conscious allocation of risk between OCC and its members, (3) the filing was unanimously approved by OCC's directors, a majority of whom are officers of clearing members, and (4) the

[1] Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (August 17, 2005).

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 52783 (November 16, 2005), 70 FR 70910.

[4] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 45167 (June 23, 1980).

[5] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

[6] Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169 (February 28, 1986).

[7] *See, e.g.*, Securities Exchange Act Release Nos. 51669 (May 9, 2005), 70 FR 25634 (May 13, 2005) [File No. SR–NSCC–2004–09]; 48201 (July 21, 2003), 68 FR 44128 (July 25, 2003) [File No. SR–GSCC–2002–10]; 37563 (August 14, 1996), 61 FR 43285 (August 21, 1996) [SR–PSE–96–21]; and 37421 (July 11, 1996), 61 FR 37513 (July 18, 1996) [SR–CBOE–96–02].

proposed rule change in no way will affect the very high level of care to which OCC has always held itself and to which it is held through the regulatory oversight of the Commission.[8] As such, OCC believes that a gross negligence standard of care is appropriate for OCC.[9]

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control.[10] The Commission believes that OCC's rule change is consistent with this Section because it will permit the resources of OCC to be appropriately utilized to protect funds and assets.[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2003–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–252 Filed 1–12–06; 8:45 am]

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[8] Letter from William H. Navin, *supra*, n. 1.

[9] Specifically, OCC is amending Article VI of its By-Laws, "Clearance of Exchange Transactions," by adding new Section 25, "Limitation of Liability," which states:

(a) Notwithstanding any other provision in the By-Laws and Rules, the Corporation will not be liable for any action taken, or any delay or failure to take any action, under the By-Laws and Rules or otherwise, to fulfill the Corporation's obligations to its Clearing Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including, without limitation, any bank or other depository, custodian, sub-custodian, clearing or settlement system, data communication service, or other third party, unless the Corporation was grossly negligent, engaged in willful misconduct, or was in violation of federal securities laws for which there is a private right of action, in selecting such third party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) however suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] The Commission notes that OCC's adoption of a comprehensive gross negligence standard of care and limitation of liability with respect to its clearing members does not affect the regulatory standards (*e.g.*, those set forth in Section 17A of the Act) that apply to OCC or the way in which OCC conducts its clearing agency operations.

[12] The Commission notes that the rule change does not alleviate OCC from liability for violation of the Federal securities laws where there exists a private right of action and therefore is not designed to adversely affect OCC's compliance with the Federal securities laws and private rights of action that exist for violations of the Federal securities laws.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53069; File No. SR–PCX–2006–01]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Minimum Price Variation for Entry of Orders for Equity Securities Traded on the Archipelago Exchange

January 6, 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 January 4, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to: (1) Amend Commentary .04 to PCXE Rule 7.6 on minimum price variations for quoting and entry of orders in equity securities; (2) delete Commentary .05 to PCXE Rule 7.6; (3) renumber Commentary .06 to PCXE Rule 7.6 and correct a cross-reference in that Commentary; and (4) delete Commentary .01 to PCXE Rule 6.16. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the principal office of the PCX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission adopted Regulation NMS on April 6, 2005.[5] One of the new rules under Regulation NMS is Rule 612, Minimum Pricing Increment. That rule prohibits a national securities exchange, its members, and quotation vendors (among others) from displaying, ranking, or accepting a bid, offer, order, or indication of interest for any NMS stock that is priced in an increment smaller than $0.01 per share, unless it is priced less than $1.00 per share.[6] In the latter case, the exchange, its members, and its quotation vendors may display, rank, or accept a bid, offer, order, or indication of interest in the NMS stock in an increment no smaller than $0.0001 per share.[7] The compliance date for Rule 612 is January 31, 2006.[8]

Currently, PCXE Rule 7.6, Commentary .04 provides that the minimum price variation ("MPV") for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). Regulation NMS is comprised of the rules at 17 CFR 642.600–642.612.

[6] *See* 17 CFR 242.612(a).

[7] *See* 17 CFR 242.612(b).

[8] *See* Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

quoting and entering orders in equity securities traded on ArcaEx is $0.01 per share, with the exception of securities priced less than $1.00 per share, in which case, on a pilot basis through September 30, 2005, the MPV is $0.001 per share. PCXE Rule 7.6, Commentary .05 provides that PCXE will round such sub-penny prices to whole penny increments, by rounding the bid down to the next whole penny and rounding the offer up to the next whole penny, and will display the rounded quotes in the consolidated quotation system without a rounding identifier.

With this filing, the Exchange is seeking to amend PCXE Rule 7.6, Commentary .04 to provide that (1) the Exchange will accept orders in equity securities traded on ArcaEx that are priced less than $1.00 per share in increments as small as $0.0001 per share, as permitted under Rule 612; (2) it will round such orders to whole penny increments following the same rounding conventions described above; and (3) it will display the rounded quotes in the consolidated quotation system. As currently provided in PCXE Rule 7.6, Commentary .04, the MPV for quoting and entering orders in equity securities traded on ArcaEx is $0.01 per share.

The Exchange also proposes to delete Commentary .05 to PCXE Rule 7.6 and Commentary .01 to PCXE Rule 6.16 because they will become outdated when the amendments to PCXE Rule 7.6, Commentary .04 take effect, and to change the numbering of PCXE Rule 7.6, Commentary .06 to Commentary .05 and correct a cross-reference in that Commentary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and 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.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] 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.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is consistent with the requirements of Rule 612 and waiving the operative delay will allow the PCX to meet the compliance deadline for Rule 612.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[13] *See id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–PCX–2006–01 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 20549–9303.

All submissions should refer to File Number SR–PCX–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PCX–2006–01 and should be submitted on or before February 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–324 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53070; File No. SR–Phlx–2005–63

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Prohibition of Trade Shredding

January 6, 2006.

I. Introduction

On October 25, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the proposed rule change relating to the prohibition of trade shredding. The proposed rule change was published for comment in the **Federal Register** on December 5, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Rule 707, Conduct Inconsistent with Just and Equitable Principles of Trade, to prohibit members, member organizations and persons associated with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization, or person associated with or employed by a member or member organization.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[4] particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[5] The Commission believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Phlx–2005–63), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–256 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53088; File No. SR–Phlx–2005–87]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 Thereto Relating to the Exchange's Covered Sale Fee and Exchange Rule 607

January 6, 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 December 23, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On January 4, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change the title from the "SEC Fee" to "Covered Sale Fee" as it appears on the Exchange's Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock℠ Fee Schedule ("Fee Schedule").[4] The Exchange also proposes to amend Exchange Rule 607 to clarify the description of the Covered Sale Fee, including renaming the title of Phlx Rule 607 to "Covered Sale Fee" and providing a more complete description of a new arrangement for passing fees among Intermarket Trading System ("ITS") participants. Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in brackets.

Rule 607.

[Transaction] *Covered Sale* Fee

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses. [Every member and member organization shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in

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[15] 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. 52834 (November 25, 2005), 70 FR 72492.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 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 made technical changes to the proposed rule text.

[4] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a license agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

Section 31 of the Securities Exchange Act of 1934, and rules thereunder.]

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System, on another exchange during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

The Exchange may enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange through the Intermarket Trading System and when other exchanges have collected the Covered Sale Fee from its members for sale transactions executed on the Exchange through the Intermarket Trading System.

* * * * *

SUMMARY OF EQUITY CHARGES (p 2/3)*

* * * * *

[SEC FEE] *Covered Sale Fee*

[The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.]

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System, on another exchange during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

* * * * *

NASDAQ–100 INDEX TRACKING STOCK℠ FEE SCHEDULE

PHLX FEE SCHEDULE

* * * * *

[SEC FEE] *Covered Sale* Fee

[The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.]

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System, on another exchange during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of changing the name of the "SEC Fee" as it appears on the Exchange's fee schedule and in Phlx Rule 607 is to conform with the Commission's request to rename this fee to help clarify that members and member organizations do not incur an obligation to the Commission under Section 31 of the Act and to help minimize confusion in connection with the Exchange's assessment of the fee. In addition, the amendments to Rule 607 reflect the new arrangements with respect to the passing of fees among ITS participants that each collects from its respective members for transactions executed on another SRO through ITS.

Background

In late June 2004, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively "SROs") to the Commission pursuant to Section 31 of the Act.[5] In connection with these new procedures, the Commission expressed its concern about the manner in which SROs labeled the fees that they passed to their members and the manner in which members labeled the fees passed to their customers. Because Section 31 does not place an obligation on members of covered SROs or their customers, the Commission stated its belief that it is misleading to suggest that a customer or an SRO member incurred an obligation to the Commission under Section 31. Accordingly, the Commission requested that SROs take action to correct any such misperception, which would include changing the title of the "SEC Fee" as it appears on the Exchange's fee schedule.

Thus, in order to comply with the Commission's request and to minimize any confusion relating to the assessment of the fee, the Exchange proposes to rename its "SEC Fee" and Phlx Rule 607 "Transaction Fee" to "Covered Sale Fee."[6]

ITS Collection

In addition, the Exchange recently filed with, and received an SEC order granting accelerated approval from, the Commission to enter into arrangements with other participating SROs to pass certain fees they have collected from members for transactions executed on another exchange through the ITS.[7] Participating SROs have entered into an arrangement to pass fees among ITS participants that each participating SRO has collected from its members for sale transactions executed on another participating SRO through ITS. Pursuant to this new arrangement, each ITS participant will determine whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant.[8] One participating SRO will then deduct the amount it owes another participating SRO and will invoice only for the difference; however, the duty to report and pay the Section 31 fee will remain with the ITS participant SRO on which the sale was in fact transacted. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

[5] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004).

[6] Pursuant to Rule 31 under the Act, 17 CFR 240.31, a covered sale is a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

[7] *See* Securities Exchange Act Release No. 52745 (November 7, 2005), 70 FR 69182, (November 14, 2005) (SR–Phlx–2005–64).

[8] For example, for the period September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. Under the new procedures established by the Commission for the calculation and collection of Section 31 fees on such covered sales, SRO B, as the executing market center, is obligated to pay the Section 31 fee to the Commission.

NSCC Collection and Computational Period

The Exchange intends to have the National Securities Clearing Corporation ("NSCC") collect this fee (and other Exchange fees) for the Exchange for certain members and member organizations and pay over to the Exchange the funds collected in connection with equity transactions, which should increase the efficiency in which this fee, as well as other Exchange fees, are collected.[9] Further, the Exchange intends to have the Options Clearing Corporation ("OCC") continue to bill and collect this fee in connection with covered sales of options.[10]

The computational period, referred to in proposed Rule 607 above, may change during the course of a year if there is a change in the Section 31 fee rate.[11] Thus, the amount of the Section 31 fee may change during the year, which would, in turn, start a new computational period. The Exchange determines whether a trade "occurs" before or after a fee rate change so that the appropriate dollar amounts of securities sales are multiplied by the correct fee rate.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with and furthers the objective of Section 6(b)(4) of the Act,[12] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[9] Currently, NSCC collects the fee on the 23rd calendar day of each month, provided that if such day is other than an NSCC business/settlement day, on the next succeeding NSCC business/settlement day. The Exchange implemented this collection practice in November 2005, which covered transactions that occurred in October 2005. For equity transactions, the NSCC debits the Phlx member's or member organization's clearing firm. If an Exchange member clears through the Stock Clearing Corporation of Philadelphia ("SCCP"), a Phlx subsidiary, the Exchange will debit the member's or member organizations' margin account at SCCP.

[10] Currently, OCC and the options exchanges, including the Phlx, have established arrangements whereby OCC tabulates the aggregate amount of sales of options that occur on the exchanges, based on data captured by OCC's systems. OCC then calculates the Section 31 fees owed by the exchanges and, in turn, remits to the Commission the Section 31 fees on behalf of these exchanges.

[11] The Commission is required to adjust the securities transaction fee rates on an annual basis; after consultation with the Congressional Budget Office and the Office of Management and Budget. The Commission may also be required to make a "mid-year" adjustment to the Section 31 fee rate.

[12] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–87 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 20549–9303.

All submissions should refer to File Number SR-Phlx-2005–87. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2005–87 and should be submitted on or before February 3, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[14] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

Under Section 19(b)(2) of the Act,[15] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. The Commission believes that such action is consistent with the protection of investors and the public interest. This proposal will make the Exchange's rules consistent with the Commission's guidance on Section 31 without undue delay. The proposal also codifies the current Exchange arrangement for passing the Covered Sale Fees between the ITS participants. Therefore, the Commission believes that proposed rule change, as amended, raises no new regulatory issues and that a full notice-and-comment period is not necessary.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change, as amended (SR–Phlx–2005–87), is hereby approved on an accelerated basis.

[13] In approving this proposal, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–257 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53078; File No. SR–Phlx–2005–88]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Elimination of the 500 Contract Cap on Payment for Order Flow Fees

January 9, 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 December 23, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to eliminate the 500-contract cap per individual cleared side of a transaction which is currently imposed in connection with the Exchange's equity options payment for order flow program.[5] The Exchange states that the elimination of the 500-contract cap would be scheduled to become effective for trades settling on or after January 2, 2006.

Below is the text of the proposed rule change. Proposed deletions are in [brackets].

* * * * *

Summary of Equity Option Charges (p. 3/6)

For any top 120 option listed after February 1, 2004 and for any top 120 option acquired by a new specialist unit ** within the first 60-days of operations, the following thresholds will apply, with a cap of $10,000 for the first 4 full months of trading per month per option provided that the total monthly market share effected on the Phlx in that top 120 Option is equal to or greater than 50% of the volume threshold in effect:

First full month of trading: 0% national market share.
Second full month of trading: 3% national market share.
Third full month of trading: 6% national market share.
Fourth full month of trading: 9% national market share.
Fifth full month of trading (and thereafter): 12% national market share.

** A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization's Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement, such as is required by Exchange Rule 783.

Real-Time Risk Management Fee

$.0025 per contract for firms/members receiving information on a real-time basis.

Equity Option Payment for Order Flow Fees *

(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.***

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ (NASDAQ–100 Index Tracking Stock℠)—$0.75 per contract.
Remaining Equity Options, except FXI Options—$0.60 per contract.

* Assessed on transactions resulting from customer orders[, subject to a 500-contract cap, per individual cleared side of transaction]. This proposal will be in effect for trades settling on or after October 1, 2005 and will remain in effect as a pilot program that is scheduled to expire on May 27, 2006.

*** Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices.

See Appendix A for additional fees.

* * * * *

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 Phlx 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 Phlx 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

According to the Phlx, currently, the following payment for order flow rates are in effect at the Exchange: (1) Equity options other than QQQQ[6] and FXI Options are assessed $0.60 per contract; (2) options on QQQQ are assessed $0.75 per contract; and (3) no payment for order flow fees are assessed on FXI Options. Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM and executed on the Exchange are assessed a payment for order flow fee, while non-electronically-delivered orders (*i.e.*, represented by a floor broker) are not assessed a payment for order flow fee.[7] The Exchange also imposes a 500-contract cap per individual cleared side of a transaction.

At this time, the Exchange proposes to eliminate the 500-contract cap per

[17] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR–Phlx–2005–58).

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. The Exchange states that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] The Phlx states that electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

individual cleared side of a transaction. The Phlx states that the purpose of this proposal is to remain competitive with other options payment for order flow programs in place at other exchanges that do not cap payment for order flow fees collected on a per order or trade basis.[8] The Exchange represents that no other changes to the Exchange's payment for order flow program are being proposed at this time.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Sections 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among the Phlx's members.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[8] See, e.g., Securities Exchange Act Release No. 52024 (July 13, 2005), 70 FR 41806 (July 20, 2005) (SR–PCX–2005–82). Telephone conversation between Cynthia K. Hoekstra, Director, Exchange, and Michou Nguyen, Attorney, Division of Market Regulation, Commission, on January 9, 2006.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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–Phlx–2005–88 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 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2005–88 and should be submitted on or before February 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–326 Filed 1–12–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5272]

Culturally Significant Objects Imported for Exhibition Determinations: "Degas, Sickert, and Toulouse-Lautrec: London and Paris"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Degas, Sickert, and Toulouse-Lautrec: London and Paris, 1870–1910", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, from on or about February 18, 2006, until on or about May 14, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 9, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–331 Filed 1–12–06; 8:45 am]

BILLING CODE 4710–05–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5273]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR Parts 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act ("AECA") (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to persons, or any party to the export, who have been convicted of violating certain statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary for Political-Military Affairs is authorized by section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or other approval is required. This prohibition is referred to as "statutory debarment."

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment proceedings outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary of State for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA. Unless licensing privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment, in accordance with section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. Any decision to grant reinstatement can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-base basis at the discretion of the Assistant Secretary of State for Political-Military Affairs. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the Assistant Secretary of State for Political-Military Affairs has statutorily debarred the following persons for a period of three years following the date of their AECA conviction:

(1) Jesus Arredondo-Sanchez (a.k.a. Jesus Arredondo), June 21, 2004, U.S. District Court, District of Arizona (Phoenix), Case #: CR 03–00524–001–PHX–FJM.

(2) Omar Carrillo, October 7, 1999, U.S. District Court, Southern District of Texas (Laredo), Case #: 5:99CR00241–001.

(3) Carlos Alberto Correa-Arango, August 31, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 05–60122–CR–HUCK.

(4) Kozo Wada, June 9, 2005, U.S. District Court, District of Oregon (Portland), Case #: Cr. 03–96–BR.

(5) Atallah Adwani, September 24, 2003, U.S. District Court, Southern District of Ohio (Cincinnati), Case #: CR–1–02–71–1.

(6) Summit Marketing, Inc., October 24, 1997, U.S. District Court, District of Massachusetts (Boston), Case #: 1:96CR10326–002–REK.

As noted above, at the end of the three-year period, the above named persons/entities remain debarred unless licensing privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*, sections 120.1(c) and (d), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR Sections 127.7(d) and 128.13(a).

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: January 9, 2006.

John Hillen,

Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E6–330 Filed 1–12–06; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Closure of Case 013–CP–05, Protection of Intellectual Property in Brazil, in the 2005 Annual Country Practice Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces closure of the review for case 013–CP–05, Protection of Intellectual Property in Brazil.

FOR FURTHER INFORMATION, CONTACT: Marideth Sandler, Executive Director of the GSP Program, Office of the United States Trade Representative (USTR), Room F–220, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2005 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is reviewing petitions concerning the country practices of certain beneficiary developing countries of the GSP program. As a result of that review, the TPSC has decided to close the review for case 013–CP–05 regarding protection of intellectual property rights in Brazil. The Petitioner was the International Intellectual Property Alliance (IIPA). The results of other ongoing country practice reviews in the 2005 Annual Review will be announced in the **Federal Register** at a later date.

Marideth J. Sandler,

Executive Director, GSP Program.

[FR Doc. 06–368 Filed 1–12–06; 8:45 am]

BILLING CODE 3190–W6–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held January 24–26, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at Northrop Grumman Integrated Systems Unmanned Systems, 16710 Via Del Campo Ct., Building 6, San Diego, California 92127. On site contact: Ms. Mary Kruse, *mary.kruse@ngc.com*, (858) 618–4693.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 203 meeting. The agenda will include:

January 24: Tuesday, 9 a.m.–11:30 a.m.

- Opening Special Session—(Welcome and Co-Chairman's Introductory Remarks, Approval of Fourth Plenary Meeting Summary, New Business, Plenary Adjourns until January 26 at 1 p.m.).
- Working Group 1 general session.
- Review WG 1 progress since the fourth Plenary.
- Sub group leader reports—presentation of issues, work plan for week, goals for Thursday report-out.

1 p.m.–4 p.m.

- Working Group 1 and Sub-Group Writing Teams in working sessions.

January 25: Wednesday, 9 a.m.–4 p.m.

- Sub-Group Writing Teams continue in working sessions.

January 26: Thursday, 9 a.m.–3 p.m.

- Sub-Group Writing Teams continue in working sessions.

3 p.m.–5 p.m.

- Reconvene Working Group 1.
- Sub groups report out.
- Identify sub group action items.
- Develop strategy for future work.
- Closing Plenary Session (Reconvene the Plenary, Prepare for Plenary #6, Date and Place of Next Meeting, Review Plenary Action Items, Other Business, and Adjourn).

Important notes:

- Note that the final plenary session will not end until 5 p.m. on January 26, 2006. Out of town attendees should make travel plans accordingly.
- No Cell phones with cameras will be allowed.
- All visitors are required to have "Escort Required" badges for entry into Northrop Grumman, and must forward the following information to Mr. Greg Loegering (*greg.loegering@ngc.com*) *as soon as possible, but at least 10 working days prior to the meeting* for issuance of these badges:
  - Visitor's Name.
  - Company/Organization Name.
  - Company Organization Address.
  - Whether the company you represent is foreign controlled or owned/incorporated in the USA.
- Any non-US citizen planning to attend the meeting at Northrop Grumman will also be issued an "Escort Required" badge and must forward the following information to Mr. Greg Loegering (*greg.loegering@ngc.com*) *as soon as possible, but at least 10 working days prior to the meeting*, or risk being unable to be admitted to the Northrop Grumman facility, where the meeting is being held:
  - Visitor's Full Name.
  - Company/Organization Name.
  - Company/Organization Address.
  - Where visitor's company is incorporated.
  - Visitor's date of birth.
  - Visitor's place of birth.
  - Visitor's passport number.
  - Visitor's passport expiration date.
  - Issuing country of visitor's passport.
  - Visitor's country of citizenship.

Upon entrance into the Northrop Grumman facility, you would be required to show a valid state photo ID (i.e., driver's license or other official state ID document), military/government ID card, passport, or resident alien registration card.

- Working Group 1 Sub-Group 3 will meet at General Atomics (driving instructions will be provided at the Plenary session) located at: General Atomics Aeronautical Systems, Inc., 13330 Evening Creek Drive, Building 5, San Diego, California 92127, On-site Contact: Mr. Michael Neale, Phone:

(858–518–7939). You will be required to show a valid photo (driver's license; passport) ID upon entrance in the General Atomics facility.

• Dress: Business Casual.

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 January 5, 2006.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 06–343 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting, Special Committee 208, Aeronautical Mobile Satellite Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 208 Meeting, Aeronautical Mobile Satellite Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 208, Aeronautical Mobile Satellite Services.

DATES: The meeting will be held January 24, 2006, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at The Arizona Golf Resort and Conference Center, 425 South Power Road, Mesa, Arizona 85206–5296, (telephone 480–832–3202 + 1–800–528–8282, fax + 1–480–981–0151), *http://www.azgolfresort.com.*

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 208 meeting. The agenda will include:

• January 24:

• Opening Plenary Session (Welcome, Introduction, and Administrative Remarks).

• Review of Authorizing Document, RTCA Paper 217–05/PMC–420, November 8, 2005.

• Discussion of and action on Terms of Reference (TOR) item 6.A. By February 28, 2006, determine if recent changes in ARINC 741 and ARINC 781 require modification of DO–210D by means of a Change 3 to DO–210D.

• Discussion of and action on Terms of Reference item 6.B, if necessary.

○ If a Change 3 is recommended, proceed immediately to produce Change 3 to DO–210D with the intent to harmonize DO–210D and ARINC 741 to the appropriate level.

○ Review and approve Draft Change 3 for submission to FRAC Process.

○ If Change 3 is necessary, the FRAC resolution meeting is suggested in conjunction with the next AGCS meeting in the summer of 2006.

○ If Change 3 is not necessary, create and approve short report to PMC stating reasons why and informing PMC that the Terms of Reference are complete.

• Closing Plenary Session (Other Business, Establish Agenda, Date and Place for Next Meeting if necessary, 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 January 6, 2006.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 06–344 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 06–06–C–00–SAV To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Savannah/Hilton Head International Airport, Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah/Hilton Head International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Patrick Graham, Executive Director of the Savannah Airport Commission at the following address: 400 Airways Avenue, Savannah, GA 31408.

Air carriers and foreign air carriers may submit copies of written comments previously provided to The Savannah/Hilton Head International Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Paul Lo, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suited 2–20, College Park, Georgia 30337, 404.305.7145. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah/Hilton Head International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 1, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by Savannah/Hilton Head International Airport was not substantially complete within the requirements of section 158.25 of part 158. The following items are required to complete the application:

Demonstrate compliance with 14 CFR 158.25(b)(7) for the Terminal Expansion project

Demonstrate that an Environmental Determination has been made for the Relocate Airfield Maintenance Road project

Address viable back-up plan funding sources for the Runway Re-designation project

Demonstrate that an Airspace determination has been made for the Runway Re-designation project

Demonstrate that Environmental Determinations have been made for the Relocate Runway 36 Localizer project and the Terminal Expansion project

The Savannah/Hilton Head International Airport has submitted the supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, not later than April 21, 2006.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2011.

Proposed charge expiration date: February 1, 2012.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,271,436.

Brief description of proposed project(s):

Projects to Impose and Use:

Upgrade terminal access control system, airfield cameras, and the emergency call-out system

Relocate airfield lighting controls to the new Air Traffic Control Tower

Construct additional General Aviation connector taxiways

Runway 09/27 Runway Safety Area improvements

Airfield lighting improvements (phase I and II)

Replace Aircraft Rescue and Fire Fighting (ARFF) bridge

Expand terminal by five gates

Terminal apron expansion

Taxiway E Milling

Terminal expansion additional loading bridges and bag lifts

Relocate Runway 36 Localizer outside the runway safety area

PFC Implementation and Administration Costs Runway Re-designation

Projects to Impose-Only:

Relocate airfield maintenance road adjacent to Runway 09/27

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Savannah/Hilton Head International Airport.

Issued in College Park, Georgia on January 5, 2006.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 06–342 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 2006–23551]

Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FHWA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under Supplementary Information.

DATES: Comments must be submitted on or before March 13, 2006.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the specific collection of information that is being commented on by referencing its OMB control number. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Davis, (202) 366–2997, Federal Highway Administration, Office of Freight Management and Operations, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Number: 2125–0034.

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia, and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that the enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 4,160 hours. This number has not changed from the last approved OMB clearance.

Frequency: The reports must be submitted annually.

Authority: 23 U.S.C. 141; 44 U.S.C. 3506(c)(2)(A); 23 CFR 657; Section 123, Pub. L. 95–599, 92 Stat. 2701; 49 CFR 1.48.

Issued On: January 6, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–336 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Office of Research and Analysis Forum on FMCSA Safety and Security Accomplishments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting/forum.

SUMMARY: The FMCSA, Office of Research and Analysis (R&A), will host a forum on FMCSA Safety and Security Accomplishments, in conjunction with the Transportation Research Board's (TRB) 85th Annual Meeting. The forum

is designed to provide insight on safety and security research, technology and analysis accomplishments that support FMCSA's mission to reduce the number and severity of commercial motor vehicle (CMV) crashes and fatalities and enhance efficiency of CMV operations. The forum topics will include a conference report on the 2005 International Conference on Fatigue Management in Transportation Operations; updated FMCSA activities in the hazardous materials area; and accomplishments to date on medical qualifications, driver health and medical reporting initiatives. Panelists will also cover the latest results of the Large Truck Crash Causation Study; a report on public input on FMCSA's notice requesting information on its Wireless Inspection Program; results of the field operational test on Lane Departure Warning Systems and Deployment of On-Board Safety Systems; and what progress has been made on improving Data Quality. A portion of the forum will be set aside for attendees to dialogue with FMCSA subject-matter experts through an open question and answer session.

DATES: The R&A Forum will be held on Sunday, January 22, 2006, from 8:30 a.m. to 12:30 p.m. Registration will begin at 8 a.m.

ADDRESSES: The R&A Forum will take place at the Marriott Wardman Park Hotel, Salon III, 2660 Woodley Road, NW., Washington, DC 20008.

Registration: This forum is listed as a session in the TRB 85th Annual Meeting Program and all registrants are welcome to attend. TRB registration is not required to attend the forum and it is open to the public at no cost. To attend the forum only, send an email to *RApartnerships@fmcsa.dot.gov*.

Information about registration for the TRB Annual Meeting will be available at *http://www.trb.org*.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Alvarez, Office of Research and Analysis (MC–RRR), Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW., Washington, DC 20024. Telephone (202) 385–2387 or e-mail *albert.alvarez@fmcsa.dot.gov*. Office hours are from 8 a.m. to 4:30 p.m., E.S.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Forum attendees will receive an information packet on current R&A programs. While the forum is open to the public, it will be limited to space available. Individuals requiring special needs/accommodations (sign, reader, etc.), please call Joanice Cole at (202) 334–2287, or e-mail *jcole@nas.edu*.

Issued on: January 10, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–344 Filed 1–12–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34809]

Gregory B. Cundiff, Connie Cundiff, CGX, Inc., and Ironhorse Resources, Inc.—Control Exemption—Caney Fork and Western RR, Inc.

Gregory B. Cundiff and Connie Cundiff (together, Cundiffs), CGX, Inc. (CGX), and Ironhorse Resources, Inc. (Ironhorse), noncarriers (together, Applicants), have filed a verified notice of exemption to acquire control of Caney Fork and Western RR, Inc. (CFWR), a Class III railroad.[1] CFWR operates in Tennessee.

The transaction was expected to be consummated on or after December 23, 2005.

The Cundiffs directly control CGX, which in turn directly controls Ironhorse. CGX directly controls three Class III rail carriers: Mississippi Tennessee Holdings, LLC; Lone Star Railroad, Inc.; and Rio Valley Railroad, Inc. Ironhorse directly controls four Class III rail carriers: Mississippi Tennessee Railroad, LLC; Railroad Switching Service of Missouri; Rio Valley Switching Company; and Southern Switching Company.

Applicants state that: (1) The rail lines operated by CFWR, and by rail carriers controlled by CGX and Ironhorse do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The purpose of this transaction is to make the efficiencies and economies of the Applicants' corporate structure available to CFWR.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34809, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stp.dot.gov*.

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–235 Filed 1–12–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Cundiffs will acquire CFWR pursuant to their acquiring a controlling interest in CFWR's stock.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34783]

The Indiana Rail Road Company—Acquisition—Soo Line Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34783; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed December 15, 2005, by The Indiana Rail Road Company (INRD) and Soo Line Railroad Company (Soo). The application seeks Board approval under 49 U.S.C. 11323–26 for INRD's acquisition of (a) Soo's Latta Subdivision, a 92.3-mile railroad line extending from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, (b) certain overhead trackage rights currently held by Soo between Chicago, IL, and Terre Haute, IN, and between Bedford, IN, and Louisville, KY, and (c) certain ancillary

trackage rights. This proposal is referred to as the Transaction, and INRD and Soo are referred to collectively as applicants.

The Board finds that the Transaction is a "minor transaction" under 49 CFR 1180.2(c), and the Board adopts a procedural schedule for consideration of the primary application and the related filings, under which the Board's final decision would be issued on April 24, 2006.

DATES: The effective date of this decision is January 13, 2006. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than January 27, 2006, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by February 21, 2006. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or either of the related filings must be filed by March 8, 2006. If a public hearing or oral argument is held, it will be held the week of March 20, 2006. The Board will issue its final decision on April 24, 2006.[1] For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John Broadley (representing INRD), John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007; (4) Terence M. Hynes (representing Soo), Sidley Austin Brown & Wood, 1501 K Street, NW., Washington, DC 20005; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after January 27, 2006, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Soo, a Class I railroad,[2] is a Minnesota Corporation that operates approximately 3,500 miles of track in the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. Soo is a wholly owned subsidiary of Canadian Pacific Railway Company (CPRC).[3] CPRC is a Canadian corporation whose stock is publicly held and traded on the New York and Toronto stock exchanges. Soo acquired its Chicago-Louisville line on February 20, 1985, as part of its purchase of the core rail system of the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee).[4]

INRD currently owns and operates a line of railroad running between Indianapolis, IN, and Newton, IL, a total distance of 155 miles. This line intersects Soo's Chicago-Louisville line at Linton, IN. INRD was formed in 1986 and has built its traffic base from approximately 12,000 carloads in its first full year of operation, to 105,810 carloads in 2004. INRD's revenues are generated primarily (i) from coal moves to Indianapolis Power & Light's (IP&L) Harding Street power plant at Indianapolis, IN, to Ameren's power plant at Lis, IL, and to Hoosier Energy's power plant at Merom, IN, and (ii) from chemical, plastics, and petroleum feedstock movements to and from plants in Robinson, IL. INRD reports that, by the end of 2005, its revenues will have exceeded the threshold for Class II carrier status for 3 consecutive years; accordingly, in January 2006, INRD will be reclassified as a Class II carrier under the Board's regulations.

CSX Transportation, Inc. (CSXT) currently owns 85% of the common stock of Midland United,[5] which in turn owns 100% of the common stock of INRD. Thomas G. Hoback, president of INRD and of Midland United, owns the remaining 15% of Midland United's common stock. The applicants submit that, at the time CSXT acquired control of INRD, it was contemplated that INRD would remain a separate short line or regional railroad and would not be functionally integrated into CSXT. The applicants state that this approach has been followed, and INRD retains its separate engineering, operating, mechanical, marketing, accounting and labor relations functions.

The Transaction for which the applicants seek approval consists of INRD's: (a) Purchase of Soo's Latta Subdivision; (b) acquisition by assignment of all of Soo's right, title and interest in and to the Main Line Trackage Rights; and (c) acquisition by assignment of all of Soo's right, title and interest in and to the Ancillary Trackage Rights. Collectively, the Latta Subdivision, the Main Line Trackage Rights, and the Ancillary Trackage Rights are referred to herein as the Acquired Lines.

The Latta Subdivision. The Latta Subdivision extends from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, a distance of 92.3 miles. The Latta Subdivision includes the Latta Branch, which runs westerly from the main line of the Latta Subdivision for approximately 8.5 miles, commencing at approximately milepost 204.3 on the Latta Subdivison. The Latta Subdivision also includes Soo's Latta Yard and the shop facilities located there, as well as various side tracks, spur tracks, connections and other related rail properties.

The Main Line Trackage Rights. The Main Line Trackage Rights to be

[1] Under 49 U.S.C. 11325(d)(2), the Board must conclude any evidentiary proceedings by the 105th day after the publication of the notice and must issue a final decision by the 45th day after conclusion of the evidentiary proceeding. While the Board will attempt to meet the applicants' accelerated schedule, the Board will take the full statutory time allotted to issue a final decision if necessary.

[2] The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of $250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than $20 million but less than $250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of $20 million or less (in 1991 dollars). *See* 49 CFR Part 1201, General Instruction 1–1(a).

[3] Soo, its parent, CPRC, and its affiliate, Delaware and Hudson Railway Company, Inc., collectively do business under the name "Canadian Pacific Railway."

[4] *See Milwoukee—Reorganizotion—Acquisition by GTC,* 2 I.C.C.2d 161 (1984); *Milwoukee—Reorgonizotion—Acquisition by GTC,* 2 I.C.C.2d 427 (1985); *off'd sub nom. In the Motter of Chicogo, Milwaukee, St. Paul and Pacific Railrood, Debtor,* 799 F.2d 317 (7th Cir. 1986).

[5] *See CSX Corporation and CSX Transportotion, Inc.—Control—The Indiono Roil Rood Compony,* STB Finance Docket No. 32892 (STB served Nov. 7, 1996).

assigned to INRD consist of the following:

(i) Overhead trackage to operate over and use certain trackage of Union Pacific Railroad Company (UP) between 80th Street, Chicago, and Dolton Junction, IL, on terms established pursuant to the trackage rights agreement between Soo and Missouri Pacific Railroad Company, dated August 23, 1995, as amended, a distance of 8.32 miles. The trackage rights are assignable with the consent of UP, which should not be unreasonably withheld;

(ii) Overhead trackage rights to operate over and use certain trackage of CSXT and UP from Dolton Junction, IL, to Woodland Junction, IN, on terms established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 65.7 miles.[6] The trackage rights are assignable with the consent of CSXT;

(iii) Overhead trackage rights to operate over and use certain trackage of CSXT from Woodland Junction, IN, to Terre Haute, IN, as established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 99.6 miles. The trackage rights are assignable with the consent of CSXT;

(iv) Overhead trackage rights to operate over and use certain trackage of CSXT from Bedford, IN, to New Albany, IN, on terms established by the agreement between Louisville & Nashville Railroad Company (L&N) and Milwaukee, dated July 17, 1973, as amended, a distance of 71.77 miles. The trackage rights are assignable with the consent of CSXT; and

(v) Rights to use the property of the former Kentucky & Indiana Terminal Company (K&ITC) between New Albany, IN, and Louisville, KY, and within Louisville, KY, on terms originally set forth in the agreement dated March 1, 1973, by and among K&ITC, the Baltimore & Ohio Railroad Company, L&N, Southern Railway Company and Milwaukee. Soo's rights under the Louisville Terminal Agreement are assignable without the approval of Norfolk Southern Railway Company (successor to Southern).

The Ancillary Trackage Rights. The Ancillary Trackage Rights to be assigned to INRD are as follows:

(i) Overhead trackage rights to operate over and use certain trackage rights of Indiana Southern Railroad (ISRR) from Elnora, IN, to Maysville, IN, on terms established by the agreement governing Soo's grant of trackage rights to ISRR, dated April 15, 1993, a distance of 19.6 miles. The agreement is assignable without ISRR's consent in connection with a sale of all or substantially all of Soo's interest in its line between Terre Haute and Bedford;

(ii) Overhead trackage rights to operate over and use certain trackage of ISRR from Beehunter, IN, to Sandborn, IN, on terms established by the agreement between Consolidated Rail Corporation (Conrail) and Milwaukee, dated June 28, 1985, as amended, a distance of 6.12 miles. ISRR's consent is required for the assignment of the trackage rights except in connection with the sale or assignment of all or substantially all of Soo's properties; and

(iii) The option to acquire trackage rights under specified conditions on ISRR's line between Elnora, IN, and Evansville, IN, on terms established by the agreement between Soo and ISRR, dated April 15, 1993, whereby Soo obtained the option to acquire such trackage rights in exchange for ISRR's receipt of trackage rights over Soo's line between Beehunter, IN, and Elnora, IN.

The applicants are in the process of obtaining consents for the assignments where required and anticipate receiving them prior to the closing of the Transaction.

In addition, INRD and Soo have entered into three agreements dealing with their future relationship: (1) The "Power Run Through Agreement," which establishes terms under which CPRC will supply run-through power for potash trains originating on CPRC and destined for Jeffersonville, IN, and the terms under which INRD will supply run-through power for petroleum coke trains originating in Rosemount, MN, and destined for the gasification facility at Fayette, IN; (2) the "Interchange Agreement," which establishes terms under which CPRC and INRD will interchange traffic at Chicago; and (3) the "Marketing and Divisions Agreement," which establishes divisions and other commercial arrangements between INRD and CPRC.

Financial Arrangements. INRD advises that it does not plan on any new financial arrangements in connection with the Transaction. No new securities will be issued. INRD will finance the Transaction with bank loans.

Passenger Service Impacts. The Transaction would have no impact on commuter or passenger operations because the Acquired Lines have no commuter or other passenger service.

Discontinuances/Abandonments. INRD does not contemplate any discontinuances or abandonments as a result of the Transaction.

Public Interest Considerations. Applicants assert that, if approved, the Transaction would promote inter- and intramodal competition and would not result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Specifically, applicants assert that the Transaction would produce significant operating efficiencies and service improvements. Currently, INRD and Soo's lines intersect at Linton, IN. Under an interchange agreement, Soo currently interchanges a substantial amount of coal traffic originating on the Latta Subdivision with INRD. Combining the Acquired Lines with INRD's existing system would allow for greater operating efficiencies than those made possible by the current INRD-Soo interchange agreement.

INRD states that it would be able to operate more efficiently on the Acquired Lines and on its existing lines by making Soo's Latta Yard, which is located close to the geographic center of the Acquired Lines and INRD's existing system, the central hub of the combined system. INRD's operating plan contemplates that trains would operate between Latta Yard, on one hand, and Indianapolis, IN, Louisville, KY, Palestine, IL, and Terre Haute, IN, on the other hand. Blocks of cars would be swapped between trains at Latta Yard into a simple hub and spoke approach. This approach, INRD believes, would improve the utilization of INRD train crews and locomotives, by eliminating unnecessary dead head miles and reducing locomotive idle time. The applicants further note that the Transaction would generate efficiencies by enabling INRD to consolidate all of its locomotive repair work and some of its car repair activities at the locomotive shop and car repair facility at Latta Yard. Lastly, INRD plans to consolidate the dispatching of its entire system at Terre Haute, as well as its customer service functions.

Applicants submit that the Transaction would improve the level of service to local shippers on the Acquired Lines by reducing transit time, increasing local service, and providing an additional intermodal service facility, in addition to service improvements on traffic that is now interchanged between Soo and INRD, as INRD assumes full control of the moves.

Applicants further note that the Transaction would allow for an improved marketing focus, which would attract additional traffic. As the Acquired Lines' original function as a bridge for traffic moving between the Chicago gateway and points in the

[6] CSXT and UP jointly own the Dolton Junction to Woodland Junction line. Each has the right unilaterally to grant trackage rights over the line.

Southeast has been rendered obsolete by industry consolidation, the Acquired Lines must now rely upon traffic originating or terminating at local points on those lines. INRD's marketing experience in, and proximity to, central and southern Indiana would permit it to develop closer relationships with local shippers. In addition, the proximity of the Acquired Lines to INRD's existing line would enable INRD to be more responsive to the equipment requirements of local shippers.

Applicants submit that the Transaction would not result in a substantial lessening of competition for overhead traffic between Chicago and the Southeast. Applicants stress that rail consolidations have rendered Soo's Chicago-Louisville line competitively irrelevant as an overhead route. Thus, INRD's acquisition of the Acquired Lines would have no material competitive impact on overhead traffic between Chicago and the Southeast.

The applicants further assert that there would be no lessening of competition for traffic originating and/or terminating on the Acquired Lines. This applies to the shipment of on-line coal, off-line coal, received petroleum coke, plastics, and potash. The applicants state that no shipper would be left without competitive options as a result of the Transaction, and INRD would not acquire any market power through its purchase of the Acquired Lines.

Lastly, INRD believes that its acquisition of the Acquired Lines would provide it with more opportunities to compete effectively with motor carriers than is the case today, and to divert traffic from truck to rail.

Time Schedule for Consummation. If the Board approves the Transaction, applicants intend to consummate the transaction on May 25, 2006, or as soon thereafter as permitted by the Board.

Environmental Impacts. Applicants contend that no environmental documentation is required because there would be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) and there would be no action that would normally require environmental documentation. Applicants therefore assert that the Transaction does not require environmental documentation under 49 CFR 1105.6(b)(4).

Historic Preservation Impacts. Applicants contend that a historic report is not required because INRD would operate the Acquired Lines and would require further Board approval to discontinue service or abandon any service. According to applicants, there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Applicants therefore assert that a historic report under 49 CFR 1105.8(b)(1) is not required.

Labor Impacts. Soo states that no Soo employee currently working on the Acquired Lines would lose the opportunity for continued employment on Soo as a result of the Transaction. As of December 1, 2005, Soo employed 77 persons on the Acquired Lines. Upon conveyance of the Acquired Lines to INRD, Soo would no longer operate over those lines and would therefore abolish all jobs on the Acquired Lines. All Soo agreement employees on the Acquired Lines have seniority under their collective bargaining agreements that would entitle them to hold positions at other locations in Soo's core territory. In addition, Soo notes that INRD would need experienced railroad employees to operate the Acquired Lines and would accept applications for employment from Soo's current employees. Soo employees who are not offered employment by INRD, or who decline INRD offers of employment, could elect to exercise their existing Soo seniority to take jobs in their crafts elsewhere on Soo. The one management employee on the Acquired Lines would be relocated.

INRD expects to be able to handle the combined operation of the Acquired Lines and its existing line with 41 additional employees. INRD plans to hire the additional 41 people needed to operate the Acquired Lines by taking applications and hiring on the basis of those applications. Applications from current Soo employees who work on the Acquired Lines would be treated on an equal basis with all others received. INRD has entered preliminary discussions with the Brotherhood of the Locomotive Engineers and Trainmen (BLET), representing INRD's train and engine personnel, regarding the terms of an implementing agreement, covering the extent to which former Soo employees hired by INRD are given credit for their prior employment within INRD's seniority system. INRD expects to be able to reach a consensual implementing agreement with BLET, and would notify the Board when such agreement has been reached.

INRD expects to change the reporting point for many of its train and engine personnel from Switz City to Latta Yard. INRD also expects to relocate six mechanical positions from Switz City to Latta Yard. While six mechanical positions would be relocated, only three employees would actually be affected. One of the positions is currently vacant and, if it is filled before the move, the person filling it would be aware that it would be moved to Latta after consummation of the Transaction. Two other positions are filled by employees who are moving to new types of positions, not mechanical work. INRD would also relocate five dispatchers from Indianapolis, IN, to Terre Haute, IN, when it consolidates dispatching of the combined operation at that location. INRD also would move some car repair activities from Indianapolis and Palestine to Latta Yard. INRD's car repair work is performed by outside contractors so no INRD employees would be affected by this move.

Protective Conditions. For the Transaction, applicants assert that, to provide the level of labor protection mandated by 49 U.S.C. 11326, the Board should impose the labor protective conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84–90 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799, 814–826 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991). Some of the Soo employees who may be affected would be entitled to elect, alternatively, to receive benefits under provisions of existing employee protective agreements that are in effect on Soo.

Application Accepted. The Board finds that the proposed Transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board is accepting the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. The Board reserves the right to require the filing of supplemental information, if necessary to complete the record.

Public Inspection. The application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, the application may be obtained from Mr. Hynes (representing Soo) and Mr. Broadley (representing INRD) at the addresses indicated above.

Procedural Schedule. The Board has considered applicants' INRD–3/SOO–3 request (filed December 15, 2005) for a procedural schedule, under which the Board would issue its final decision on April 24, 2006, and that decision would become effective on May 24, 2006.

The Board is adopting a procedural schedule that is essentially the same as applicants' proposed procedural schedule. However, whereas applicants' schedule provides that an oral argument will be held, if necessary, on March 22,

2006, to allow greater flexibility in the handling of the Board's docket, the Board's schedule provides that any necessary oral argument or public hearing will be held the week of March 20, 2006. Further, although applicants' schedule provides the notice of acceptance of application to be published in the **Federal Register** on January 17, 2006, the Board's schedule provides for publication on January 13, 2006, to make the schedule consistent with the Board's normal operating procedure.

Under the procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file, no later than January 27, 2006, a notice of intent to participate; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by DOJ and DOT, must be filed by February 21, 2006; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the primary application or either of the related filings must be filed by March 8, 2006. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, March 8), their comments in response to the comments of other parties, and applicants will be allowed to file (as quickly as possible thereafter) a response to any such comments of DOJ and/or DOT. Under this schedule, a public hearing or oral argument may be held the week of March 20, 2006. The Board will issue its final decision on April 24, 2006, and the Board will make any such approval effective on May 24, 2006. For further information respecting dates, see Appendix A (Procedural Schedule).

Notice of Intent To Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than January 27, 2006, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, Mr. Hynes (as representative of Soo), and Mr. Broadley (as representative of INRD).

Service List Notice. The Board will serve, as soon after January 27, 2006, as practicable, a notice containing the official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by DOJ and DOT, must be filed by February 21, 2006.

Because the Transaction proposed in the application is a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition; Rebuttal in Support of the Application. Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the primary application or either of the related filings, must be filed by March 8, 2006.

Public Hearing/Oral Argument. The Board may hold a public hearing or an oral argument in this proceeding the week of March 20, 2006.

Discovery. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Environmental Matters. Under the Council on Environmental Quality (CEQ) regulations, for those types of proposed actions for which the environmental effects are ordinarily insignificant, an environmental review need not be conducted under the National Environmental Policy Act of 1969 (NEPA).[7] Rather, such activities are covered by a "categorical exclusion." In its environmental rules, the Board has various categorical exclusions.[8] As pertinent here, where portions of the Acquired Lines are located in an air quality "nonattainment" area, a rail line acquisition proposal that would not result in operational changes that exceed certain thresholds—generally an increase in rail traffic of at least three trains a day or 50% in traffic (measured in gross ton miles annually)—normally requires no environmental review. 49 CFR 1105.6(c)(2)(i).

Applicants state that the traffic increases they project to occur, should this proposal be approved, consist of increasing local service to and from Louisville, KY, from 3 days per week to 5 days per week. Applicants maintain that the contemplated changes would improve service to shippers and would create operational efficiencies.

While INRD believes that these efficiencies would eventually attract additional rail traffic, including diversion from trucks, applicants state that the potential traffic increases would not result in any changes in operations that exceed the Board's thresholds for environmental documentation established in the Board's environmental rules at 49 CFR 1105.7(e)(5)(ii), and there is nothing in the application to indicate that the transaction has any potential for significant environmental impacts. The Board's Section of Environmental Analysis (SEA) therefore has concluded that formal environmental review is not warranted in this case, and that this proceeding is "categorically excluded" from environmental review under NEPA.

Finally, SEA agrees with applicants that the proposed action does not require historic review under the National Historic Preservation Act of 1966 because further approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. 49 CFR 1105.8(b)(1).

Filing/Service Requirements. Persons participating in this proceeding may "file" with the Board and "serve" on other parties: a notice of intent to participate (due by January 27); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due

[7] 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4.

[8] 49 CFR 1105.6(c).

by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings (due by February 21); and any responses to comments, etc., and any rebuttal in support of the primary application or either of the related filings (due by March 8).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format. Any person e-filing a document should comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John Broadley (representing INRD), John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007; (4) Terence M. Hynes (representing Soo), Sidley Austin Brown & Wood, 1501 K Street, NW., Washington, DC 20005; and (5) any other person designated as a POR on the service-list notice.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged either to secure copies of decisions, orders, and notices via the Board's Web site at *http://www.stb.dot.gov* under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapdc@verizon.net*; telephone number: 202–306–4004), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

Access to Filings. An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The public version of the primary application and other filings in this proceeding will also be available on the Board's Web site at *http://www.stb.dot.gov* under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in STB Finance Docket No. 34783 is accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on January 13, 2006.

Decided: January 9, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

December 15, 2005—Application, motion for protective order, and request for issuance of procedural schedule filed.
December 22, 2005—Protective order issued.
January 13, 2006—Board notice of acceptance of application published in the **Federal Register**.
January 27, 2006—Notices of intent to participate in this proceeding due.
February 21, 2006—All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of DOJ and DOT, due.
March 8, 2006—Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application and/or either or both of the related filings due.
Week of March 20, 2006—A public hearing or oral argument may be held.
April 24, 2006—Date of service of final decision.
May 24, 2006—Effective date of final decision.

[FR Doc. 06–337 Filed 1–12–06; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34765]

Vicksburg Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company

Vicksburg Southern Railroad, Inc. (VSOR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from The Kansas City Southern Railway Company (KCS) and operate approximately 21.5 miles of rail line consisting of the following lines located in Mississippi: (1) KCS's Redwood Branch, which is located between milepost 21.9, at the end of the line near Redwood, MS, and milepost 218.0, north of KCS's Vicksburg Yard, at Vicksburg, MS, and includes track numbers 418, 419, 429, 430, 431, 432, and 433, and the locomotive facility buildings within the Vicksburg Yard; and (2) the branch line located between milepost 223.0, south of the connection with the KCS main line, and milepost 229.85, near Cedars, MS.

This transaction is related to STB Finance Docket No. 34766, *Watco Companies, Inc.—Continuance in Control Exemption—Vicksburg Southern Railroad, Inc.*, wherein Watco Companies, Inc., has filed a notice of exemption to continue in control of VSOR upon its becoming a Class III rail carrier.

VSOR certifies that its projected revenues as a result of the transaction will not result in VSOR's becoming a Class II or Class I rail carrier. VSOR also certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after January 8, 2006.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34765, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, 1455 F

Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–236 Filed 1–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34766]

Watco Companies, Inc.—Continuance in Control Exemption—Vicksburg Southern Railroad, Inc.

Watco Companies, Inc. (Watco), has filed a verified notice of exemption to continue in control of Vicksburg Southern Railroad, Inc. (VSOR), upon VSOR's becoming a Class III rail carrier.[1]

The transaction is expected to be consummated on or shortly after January 8, 2006.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34765, *Vicksburg Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company*. In that proceeding, VSOR seeks to acquire by lease from The Kansas City Southern Railway Company and operate approximately 21.5 miles of rail line consisting of the following lines located in Mississippi: (1) KCS's Redwood Branch, which is located between milepost 21.9, at the end of the line near Redwood, MS, and milepost 218.0, north of KCS's Vicksburg Yard, at Vicksburg, MS, and includes track numbers 418, 419, 429, 430, 431, 432, and 433, and the locomotive facility buildings within the Vicksburg Yard; and (2) the branch line located between milepost 223.0, south of the connection with the KCS main line, and milepost 229.85, near Cedars, MS.

Watco, a Kansas corporation, is a noncarrier that currently controls 16 Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad, Inc. (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), Pennsylvania Southwestern Railroad, Inc. (PSWR), Great Northwest Railroad, Inc. (GNR), Kaw River Railroad, Inc. (KRR), Mission Mountain Railroad, Inc. (MMT), Appalachian & Ohio Railroad, Inc. (AO), Mississippi Southern Railroad, Inc. (MSRR), Yellowstone Valley Railroad, Inc. (YVRR), Louisiana Southern Railroad, Inc. (LSRR), Arkansas Southern Railroad, Inc. (ARSR), and Alabama Southern Railroad, Inc. (ABS).[2]

Applicant states that: (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, KRR, MMT, AO, MSRR, YVRR, LSRR, ARSR, and ABS do not connect with the rail lines being leased by VSOR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being leased by VSOR with any railroad in the Watco corporate family; and (3) neither VSOR nor any of the carriers controlled by Watco are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of applicant's rail carrier subsidiaries, thereby improving the overall efficiency of rail service provided by the 17 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34766, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http//www.stb.dot.gov*.

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–237 Filed 1–12–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Watco owns 100% of the issued and outstanding stock of VSOR.

[2] SKO's lines are located in Missouri, Kansas, and Oklahoma; PRCC's lines are located in Washington, Oregon, and Idaho; TIBR's lines are located in Texas and Louisiana; SLWC's lines are located in Oklahoma; EIRR's lines are located in Idaho; K&O's lines are located in Kansas and Colorado; PSWR's line is located in Pennsylvania; GNR's lines are located in Idaho and Washington; KRR's lines are located in Kansas and Missouri; MMT's lines are located in Montana; AO's lines are located in West Virginia; MSRR's line is located in Mississippi; YVRR's lines are located in Montana; LSRR's lines are located in Louisiana; ARSR's lines are located in Arkansas; and ABS's lines are located in Mississippi and Alabama.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1067 (Sub-No. 1X)]

Iowa Northwestern Railroad—Abandonment Exemption—in Osceola and Dickinson Counties, IA

On December 27, 2005, General Railway Corporation, d/b/a Iowa Northwestern Railroad (IANW) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Iowa Northwestern Railroad, extending from milepost 235.25 near Lake Park, IA, to the end of the line at milepost 252.3 near Allendorf, IA, a distance of 17.05 miles in Osceola and Dickinson Counties, IA (the line). The stations of Harris (MP 240.5), Ocheyedan (MP 246.0) and Allendorf (MP 251.8) are located on the line. The line traverses United States Postal Service Zip Codes 51249, 51347, 51345, and 51354.

The line does not contain federally granted rights-of-way. Any documentation in IANW's possession will be made available promptly to those requesting it.

IANW states that no railroad employees will be affected by this action. Nevertheless, to ensure that is the case, the interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 14, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after

service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 2, 2006. Each trail use request must be accompanied by a $200 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1067 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) John F. Larkin, General Railway Corp. d/b/a Iowa Northwestern Railroad, 4814 Douglas St., Omaha, NE 68132.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–234 Filed 1–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2 § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on January 31, 2006 at 3 p.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Bond Market Association ("Committee")

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Commission will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2 § 10(d) and Pub. L. 103–202, § 202(c)(1)(B) (31 U.S.C. § 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committee established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy 5 U.S.C. 552(c). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: Janaury 6, 2006.

Emil W. Henry, Jr.,

Assistant Secretary, Financial Institutions.

[FR Doc. 06–297 Filed 1–12–06; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–01]

BOARD OF THE GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. OP–1248]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–01]

Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Proposed guidance with request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies), request comment on this proposed guidance entitled, Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (Guidance). The Agencies have observed that some institutions have high and increasing concentrations of commercial real estate loans on their balance sheets and are concerned that these concentrations may make the institutions more vulnerable to cyclical commercial real estate markets. This proposed Guidance helps identify institutions with commercial real estate loan concentrations that may be subject to greater supervisory scrutiny. As provided in the proposed Guidance, such institutions should have in place risk management practices and capital levels appropriate to the risk associated with these concentrations.

DATES: Comments must be submitted on or before March 14, 2006.

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Please consider submitting your comments by e-mail or fax since paper mail in the Washington area and at the Agencies is subject to delay. Interested parties are invited to submit comments to:

OCC: You should include "OCC" and Docket Number 06–01 in your comment. You may submit your comment by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov.* Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."
- E-Mail Address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number for this notice. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments in person: You may inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request that we send you an electronic copy of comments via e-mail or mail you a CD–ROM containing electronic copies by contacting the OCC at *regs.comments@occ.treas.gov.*
- Docket Information: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1248, by any of the following methods:

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

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

FDIC: You may submit comments by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the Agency Web site.
- E-Mail: *Comments@FDIC.gov.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 pm. on business days.

OTS: You may submit comments, identified by docket number 2006–01, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include docket number 2006–01 in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–01.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Address envelope as follows: Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–01.

Instructions: All submissions received must include the agency name and docket number for this proposed Guidance. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the OTS's Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Bailey, National Bank

Examiner, Credit Risk Division, (202) 874–5170, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Denise Dittrich, Supervisory Financial Analyst, (202) 452–2783; or Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521; or Sabeth I. Siddique, Assistant Director, (202) 452–3861, Division of Banking Supervision and Regulation; or Mark Van Der Weide, Senior Counsel, Legal Division, (202) 452–2263. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FDIC: James Leitner, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6790, or Benjamin W. McDonough, Attorney, Legal Division, (202) 898–7411.

OTS: William Magrini, Senior Project Manger, (202) 906–5744, or Karen Osterloh, Counsel, (202) 906–6639.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies have observed that some institutions have high and increasing concentrations of commercial real estate loans on their balance sheets and are concerned that these concentrations may make the institutions more vulnerable to cyclical commercial real estate markets. The Agencies have previously issued regulations and guidelines that outline supervisory expectations for a safe and sound commercial real estate lending program. This proposed statement is intended to reinforce that guidance as it relates to institutions with concentrations in commercial real estate loans.

II. Principal Elements of the Guidance

For the purposes of the proposed Guidance, the Agencies are focusing on concentrations in those types of commercial real estate (CRE) loans that are particularly vulnerable to cyclical commercial real estate markets. These include CRE exposures where the source of repayment primarily depends upon rental income or the sale, refinancing, or permanent financing of the property. Loans to REITs and unsecured loans to developers that closely correlate to the inherent risk in CRE markets would also be considered CRE loans for purposes of the proposed Guidance.

The proposed Guidance sets forth thresholds for assessing whether an institution has a CRE concentration and should employ heightened risk management practices. This Guidance is based upon the principles contained in the Agencies' real estate lending standards regulations and guidelines.

The proposed Guidance also reminds institutions with CRE concentrations that they should hold capital higher than regulatory minimums and commensurate with the level of risk in their CRE lending portfolios. In assessing the adequacy of an institution's capital, the proposed Guidance states that the Agencies will take into account the level of inherent risk in its CRE portfolio and the quality of its risk management practices.

III. Request for Comment

The Agencies are requesting public comment on all aspects of the proposed Guidance. In particular, the Agencies request comment on the scope of the definition of CRE and on the appropriateness of the thresholds for determining elevated concentration risk.

The text of the proposed Guidance entitled, Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices follows:

Purpose

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the Agencies) are jointly issuing this Guidance to address the increasing concentrations of commercial real estate loans at many institutions. The Agencies are concerned that concentrations in commercial real estate loans where repayment is primarily dependent on rental income or from the proceeds of the sale, refinancing or permanent financing of the property may expose institutions to unanticipated earnings and capital volatility due to adverse changes in the general commercial real estate market.

This Guidance reinforces the Agencies' existing guidelines for real estate lending and safety and soundness.[1] This Guidance also provides criteria for identifying institutions with commercial real estate loan concentrations that may be subject to greater supervisory scrutiny. As provided in the Guidance, such institutions should have in place risk management practices and capital levels appropriate to the risk associated with these concentrations.

For purposes of this Guidance, commercial real estate (CRE) loans are exposures secured by raw land, land development and construction (including 1–4 family residential construction), multi-family property, and non-farm nonresidential property where the primary or a significant source of repayment is derived from rental income associated with the property (that is, loans for which 50 percent or more of the source of repayment comes from third party, non-affiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. Loans to REITs and unsecured loans to developers that closely correlate to the inherent risk in CRE markets would also be considered CRE loans for purposes of this Guidance.

Background

In the past, weak CRE loan underwriting and depressed CRE markets have contributed to significant bank failures and instability in the banking system. While underwriting standards are generally stronger than those during previous CRE cycles, the Agencies have observed high concentrations in CRE loans at some institutions. The Agencies are concerned that these concentrations may make the institutions more vulnerable to cyclical CRE markets. Accordingly, institutions with such CRE concentrations should have both heightened risk management practices and levels of capital that are higher than the regulatory minimums and appropriate to the risk in their CRE lending portfolios.

Recent examinations have indicated that the risk management practices and capital levels of some institutions are not keeping pace with their increasing CRE concentrations. In some cases, the Agencies have observed that institutions have rapidly expanded their CRE lending operations into new markets without establishing adequate control and reporting processes, including the preparation of market analyses. The Agencies are also concerned when institutions with high CRE concentrations maintain capital levels near regulatory minimums. Minimum levels of regulatory capital do not provide institutions with an adequate cushion to absorb unexpected losses arising from loan concentrations and are inconsistent with the Agencies' capital adequacy guidelines. Institutions with a concentration in CRE loans should ensure the maintenance of capital levels

[1] Refer to the Agencies' regulations on real estate lending standards and the Interagency Guidelines for Real Estate Lending Policies: 12 CFR part 34, subpart D and appendix A (OCC); 12 CFR part 208, subpart E and appendix C (FRB); 12 CFR part 365 and appendix A (FDIC); and 12 CFR 560.100–101 (OTS). Refer to the Interagency Guidelines Establishing Standards for Safety and Soundness: 12 CFR part 30, appendix A (OCC); 12 CFR part 208, Appendix D–1 (FRB); 12 CFR part 364, appendix A (FDIC); and 12 CFR part 570, appendix A (OTS).

that are commensurate with the risk of such concentrations.

Identification of Institutions With CRE Concentrations

Institutions with CRE concentrations should have in place risk management practices consistent with this Guidance to mitigate the increased risks associated with such concentrations. To determine whether it has a concentration in CRE lending that warrants the use of heightened risk management practices, an institution, as a preliminary step, should use regulatory reports to determine whether it exceeds or is rapidly approaching the following thresholds:

(1) Total reported loans for construction, land development, and other land [2] represent one hundred percent (100%) or more of the institution's total capital; [3] or

(2) Total reported loans secured by multifamily and nonfarm nonresidential properties and loans for construction, land development, and other land [4] represent three hundred percent (300%) or more of the institution's total capital.

Institutions exceeding threshold (1) would be deemed to have a concentration in CRE construction and development loans and should have heightened risk management practices appropriate to the degree of CRE concentration risk of these loans in their portfolios and consistent with the Guidance set forth below. If an institution exceeds threshold (2), the institution should further analyze its loans and quantify the dollar amount of those that meet the definition of a CRE loan contained in this Guidance. If the institution has a level of CRE loans meeting the CRE definition of 300 percent or more of total capital, it should have heightened risk management practices that are consistent with the Guidance set forth below. The Agencies have excluded loans secured by owner-occupied properties from the CRE definition because their risk profiles are less influenced by the condition of the general CRE market.

This Guidance may be applied on a case-by-case basis to any institution that has had a sharp increase in CRE lending over a short period of time or has a significant concentration in CRE loans secured by a particular property type.

Risk Management Principles

The Agencies have previously issued regulations and guidance that outline supervisory expectations for a safe and sound real estate lending program. This statement is intended to reinforce that guidance as it relates to institutions with concentrations in CRE loans. The risk management and capital adequacy principles contained in this guidance are broadly prudent for all institutions involved in CRE lending.

Board and Management Oversight. The board of directors has ultimate responsibility for the level of risk taken by its institution. Directors, or a committee thereof, should explicitly approve the overall CRE lending strategy and policies of the institution. They should receive reports on changes in CRE market conditions and the institution's CRE lending activity that identify the size, significance, and risks related to CRE concentrations. Directors should use this information to provide clear guidance to management regarding the level of CRE exposures acceptable to the institution. The board also has the responsibility to ensure that senior management implements the procedures and controls necessary to comply with adopted policies. The board should periodically review and approve CRE aggregate risk exposure limits and appropriate sublimits (for example, by property type and geographic area) to conform to any changes in the institution's strategies and to respond to changes in market conditions. Directors should also ensure that management compensation policies are compatible with the institution's strategy and do not create incentives to assume unintended risks.

Management is responsible for implementing the CRE strategy in a manner that is consistent with the institution's stated risk tolerance. Management should develop and implement policies, procedures, and limits that provide for adequate identification, measurement, monitoring, and control of the CRE risks. The Agencies' real estate lending regulations require that each institution adopt and maintain a written policy that establishes appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate, including CRE loans. The Interagency Guidelines for Real Estate Lending Policies state that loans exceeding the interagency loan-to-value (LTV) guidelines should be recorded in the bank's records and the aggregate amount of loans exceeding the LTV guidelines reported to the board at least quarterly. Examiners will continue to review these reports to determine whether the institution's exceptions are adequately documented and are appropriate in view of all relevant credit considerations. Further, the Agencies' appraisal regulations and related guidance require that each institution have an effective real estate appraisal and evaluation program that adequately supports its CRE lending activity.[5]

Strategic Planning. An institution's strategic plan should address the rationale for its CRE concentration levels relative to the institution's overall growth objectives and financial targets and capital levels. In developing its strategy as well as in continuous monitoring of CRE exposure, an institution should perform an analysis of the potential effect of a downturn in real estate markets on both earnings and capital. The strategy should also include a contingency plan for responding to adverse market conditions. The contingency plan should address possible actions for mitigating CRE concentration risk and ensuring the adequacy of capital and reserves. If management believes the institution could reduce its CRE exposure by selling exposures, it should assess the marketability of the portfolio. This should include an evaluation of the institution's capabilities in accessing the secondary market and a comparison of its underwriting standards with those that exist in the secondary market.

Underwriting. An institution's lending policies should define the level of risk that is acceptable to its board of directors. Therefore, lending policies should provide clear and measurable underwriting standards and be consistent with the Agencies' real estate lending regulations and guidelines. Policy guidelines should be based on a careful review of internal and external factors that affect the institution, such as its market position, historical experience, present and prospective trade area, probable future loan and funding trends, staff capabilities, and technology.

Consistent with the Agencies' real estate lending standards, underwriting standards should include standards for:

[2] For commercial banks as reported in the Call Report FFIEC 031 and 041 schedule RC–C item 1a. For Savings associations as reported in the Thrift Financial Report, schedule SC lines SC230, SC235, SC240, and SC265.

[3] For purposes of this Guidance, the term "total capital" means the total risk-based capital as reported for commercial banks in the Call Report (FFIEC 031 and 041 schedule RC–R—Regulatory Capital, line 21). For savings associations as reported in the Thrift Financial Report, CCR, Line CCR39.

[4] For commercial banks as reported in the Call Report FFIEC 031 and 041 schedule RC–C items 1a, 1d, and 1e. For savings associations as reported in the Thrift Financial Report Schedule SC lines SC230, SC235, SC240, SC256, SC260, and SC 265.

[5] Refer to the Agencies' appraisal regulations: 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E and 12 CFR part 225, subpart G (FRB); 12 CFR part 323 (FDIC); and 12 CFR part 564 (OTS).

- Maximum loan amount by type of property,
- Loan terms,
- Pricing structures,
- LTV limits by property type,
- Requirements for feasibility studies and sensitivity analysis or stress-testing,
- Minimum requirements for initial investment and maintenance of hard equity by the borrower, and
- Minimum standards for borrower net worth, property cash flow, and debt service coverage for the property.

Credit analysis should reflect both the borrower's overall creditworthiness and project-specific considerations.[6] Management should also compare the institution's underwriting standards for individual property types with those that exist in the secondary market. When an institution's standards are substantially more lenient, management should justify the reasons why the institution's risk criteria deviate from those of the secondary market and should document their long-term plans for these credits. Additionally, for development and construction loans, the institution should have sound policies and procedures governing loan disbursements to ensure that disbursements do not exceed actual development and construction costs. Prudent controls should include an inspection process, documentation on construction progress, tracking presales and preleasing, and exception reporting.

An institution's lending policies should permit exceptions to underwriting standards only on a limited basis. When an institution does permit an exception, it should document how the transaction does not conform to the institution's policy or underwriting standards, obtain appropriate management approvals, and provide reports to the board of directors detailing the number, nature, justifications, and trends for exceptions in a timely manner. Exceptions to both the institution's internal lending standards and the Agencies' supervisory LTV limits should be monitored and reported on a regular basis. Further, institutions should analyze trends in exceptions to ensure that risk remains within the institution's established risk tolerance limits.

Risk Assessment and Monitoring of CRE Loans. Institutions should establish and maintain thoroughly articulated policies that specify requirements and criteria for risk rating CRE exposures, ongoing account monitoring, identifying loan impairment, and recognizing losses. Risk ratings should be risk sensitive, objective, and tailored to the CRE exposure types underwritten by the institution. A strong risk rating system is important for maintaining the integrity of an institution's risk management system and in providing an early warning of emerging weaknesses. An institution's internal rating systems should consider an assessment of a borrower's creditworthiness and of an exposure's estimated loss severity to ensure that both the risk of the obligor and the transaction itself are clearly evaluated. When assigning risk ratings to CRE loans, an institution should consider the property's sensitivity to changes in macro and project-specific factors including variations in vacancy and rental rates, interest rates, and inflation rates.

Policies should address the ongoing monitoring of individual loans, including the frequency of account reviews, updating of borrower credit information, and status of leasing. Policies should require periodic comparisons of actual property performance information with projections at the time of original underwriting and the appraisal assumptions (for example, lease-up assumptions) to determine if any credit deterioration or value impairment has occurred. In addition, policies should specify the frequency with which transaction risk ratings should be reviewed to ensure they appropriately reflect the transaction's level of credit risk.

Portfolio Risk Management. Even when individual CRE loans are underwritten conservatively, large aggregate exposures to related sectors can expose an institution to an unacceptable level of risk. Therefore, an institution should measure and control CRE credit risk on a portfolio basis by identifying and managing concentrations, performing market analysis, and stress testing. A strong management information system is key to the successful implementation of a portfolio management system.

Management Information System (MIS). To accurately assess and manage portfolio concentration risk, the MIS should provide meaningful information on CRE portfolio characteristics that are relevant to the institution's lending strategy, underwriting standards, and risk tolerances. Institutions are encouraged, on either an automated or manual basis, to stratify the portfolio by property type, geographic area, tenant concentrations, tenant industries, developer concentrations, and risk rating. Institutions should be able to aggregate total exposure to a borrower including their credit exposure related to derivatives, such as interest rate swaps. MIS should maintain the appraised value at origination and subsequent valuations. Other useful stratifications include loan structure (for example, fixed rate or adjustable), loan type (for example, construction, mini perm, or permanent), loan-to-value limits, debt service coverage, policy exceptions on newly underwritten credit facilities, and related loans (for example, loans to tenants). Management reporting should be timely and in a format that clearly shows changes in the portfolio's risk profile, including risk-rating migrations. In addition, the MIS should provide management with the ability to conduct stress test analysis of the CRE portfolio for varying scenarios. There should also be a well-defined, formal process through which management reviews and evaluates concentration and risk management reports, as well as special ad hoc analyses in response to market events.

Identifying and Managing Concentrations. Active oversight and monitoring by management is an important component of the management of CRE concentration risk. Management should continually evaluate the degree of potential correlation between related sectors and establish internal lending guidelines and limits that control the institution's overall risk exposure. An institution should combine and view as concentrations any groups or classes of CRE loans sharing significant common characteristics and similar sensitivity to adverse economic, financial, or business developments. Using established limits relevant to its lending strategy and portfolio characteristics, an institution should monitor and control its CRE concentrations.

Management should have strategies for managing concentration levels. The use of secondary market sales to institutional investors or securitizations is one example of a strategy for actively managing concentration levels without curtailing new originations. In addition, executing market sales provides corroboration that the institution's underwriting and pricing are consistent with market standards. Moreover, as firm take-out commitments have become rare, many institutions require that commercial construction loans be written to secondary market standards. Institutions with high levels of construction and development loans should closely monitor market conditions particularly when relying on permanent loan take-outs as a way of managing concentration levels.

[6] Refer to the Interagency Guidelines for Real Estate Lending Policies: 12 CFR part 34, appendix A (OCC); 12 CFR part 208, appendix C (FRB); 12 CFR part 365, appendix A (FDIC); and 12 CFR 560.100–101 (OTS).

In managing CRE concentration levels, institutions are also encouraged to consider other credit exposures correlated to the CRE market such as commercial mortgage-backed securities.

Market Analysis. Institutions should perform ongoing evaluations of the market conditions for the various property types and geographic areas or markets represented in their portfolio. Market analysis is particularly important as an institution expands its geographic scope of operations into new markets. In making decisions about new markets and new originations, market analysis should be an important evaluation criterion for individual credits as well as for the portfolio. Institutions should utilize multiple sources for obtaining market information such as published research data, monitoring new building permits, and maintaining contacts with local contractors, builders, real estate agents, and community development groups.

Management should ensure that the institution's CRE lending strategy and portfolio risk assessments integrate the findings of its market analysis and evaluation. Moreover, market information should provide management with sufficient information to determine whether revisions to its CRE lending strategy and policies are necessary to respond to identified market trends, and to form the basis for its stress testing.

Portfolio Stress Testing. Institutions should consider performing portfolio level stress tests of their CRE exposures to quantify the impact of changing economic scenarios on asset quality, earnings, and capital. The Agencies recognize that portfolio level stress testing is an evolving process and encourage institutions to consider its use as a risk management tool and to review periodically the adequacy of stress testing practices relative to their CRE exposures. The sophistication of stress testing practices should be consistent with the size and complexity of the institution's CRE loan portfolio.

Portfolio stress testing does not necessarily require the use of a sophisticated portfolio model. Depending on the risk characteristics of the CRE portfolio, it may be appropriate for a stress test to be as simple as an aggregation of the results of individual loan stress tests, testing the impact of ratings migration, or applying stressed historical loss rates to the portfolio. Stress tests should focus on the more vulnerable segments of an institution's CRE portfolio, given the prevailing market environment and the institution's business strategy.

Allowance for Loan Losses. Institutions also should consider CRE concentrations in their assessment of the adequacy of the allowance for loan and lease losses. The Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions provides guidance on criteria that institutions should consider when evaluating groups of loans with common risk characteristics.

Capital Adequacy

The Agencies' capital adequacy guidelines note that institutions should hold capital commensurate with the level and nature of the risks to which they are exposed and that institutions with high or inordinate levels of risk are expected to operate well above minimum regulatory capital requirements. Minimum levels of regulatory capital [7] do not provide institutions with sufficient buffer to absorb unexpected losses arising from loan concentrations.[8] Failure to maintain an appropriate cushion for concentrations is inconsistent with the Agencies' capital adequacy guidelines. Moreover, an institution with a CRE concentration should recognize the need for additional capital support for CRE concentrations in its strategic, financial, and capital planning, including an assessment of the potential for future losses on CRE exposures.

In performing its internal capital analysis, an institution should make use of the results of any stress testing and other quantitative and qualitative analysis. The internal capital analysis should also reflect the possibility that any historical correlations used might not remain stable under stress conditions. For larger, more complex institutions that employ formal quantitative economic capital systems, the analysis of concentrations should provide for an adequate "cushion" above model outputs to compensate for potential uncertainties in risk measurement.

In assessing the adequacy of an institution's capital, the Agencies will take into account analysis provided by the institution as well as an evaluation of the level of inherent risk in the CRE portfolio and the quality of risk management based on the sound practices set forth in this Guidance.

Supervisory Evaluation and Action

The CRE sound practices set forth in this Guidance are effective methods for addressing the increased risks associated with CRE concentrations, and illustrate the types of practices that the Agencies consider important elements of sound risk management and adequate capital. An institution that is unable to adequately assess and meet its capital needs may be required to develop a plan for reducing its concentrations or for achieving higher capital ratios.

This concludes the text of the proposed Guidance entitled, Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices.

Dated: January 6, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, January 10, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 9th day of January, 2006.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 9, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 06–340 Filed 1–12–06; 8:45 am]

BILLING CODE 4810–33–U; 6210–01–U; 6714–01–U; 6720–01–U

[7] Most CRE exposures are risk-weighted at 100 percent. By statute, however, certain loans made for the construction of single-family housing and certain multifamily housing loans are risk-weighted at 50 percent. See 12 U.S.C. 1831n note (Risk-Weighting of Housing Loans for Purposes of Capital Requirements). The Agencies have codified these statutory risk-weighting requirements in their regulations at 12 CFR Part 3, Appendix A, Section 3 (OCC); 12 CFR Part 208, Appendix A, Section III. C. (FRB); 12 CFR Part 325, Appendix A, Section II.C. (FDIC); and 12 CFR 567.6(a)(1)(iii) (50% risk-weights for "qualifying multifamily mortgage loan" and "qualifying residential construction loan" as defined in 12 CFR 567.1) (OTS).

[8] Depending upon the level and nature of the CRE concentration, an institution may need to maintain capital at levels exceeding the "well capitalized" standard to ensure the overall sound financial condition of the institution.

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463, Federal Advisory Committee Act, that a meeting of the Health Services Research and Development Service Scientific Merit Review Board will be held March 7–9, 2006, at the Crowne Plaza Hotel (Atlanta-Ravinia), 4355 Ashford Dunwoody Road, Atlanta,

Georgia. Each subcommittee meeting of the Merit Review Board will be open to the public the first day convened for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of each meeting will be closed. The closed portion of the meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

On Tuesday, March 7, 2006, an orientation session will be held from 7 p.m. to 9 p.m. On Wednesday, March 8, 2006, five subcommittees will convene from 8 a.m. to 5 p.m.—Implementation and Management Research Science, Chronic Disease Management, General Health Services Research, Special Populations and the Nursing Research Initiative (NRI). On Thursday, March 9, 2006, five subcommittees will convene from 8 a.m. to 5 p.m.—Implementation and Management Research Science (continuation), Special Populations (continuation), General Health Services Research (continuation), Chronic Disease Management (continuation) and Equity/Women's Health review group.

The purpose of the Board is to review research and development applications concerned with the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

After the subcommittees meet there will be a debriefing provided to members of Health Services Research & Development Service Scientific Merit Review Board. This debriefing, by teleconference, will be held to discuss the outcomes of the review sessions and to ensure the integrity and consistency of the review process.

During the closed portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Scientific Merit Review Program Manager (124R), Health Services Research and Development Service, Department of Veterans Affairs, 1722 Eye Street, NW., Washington, DC, 20006 at least five days before the meeting. For further information, call (202) 205–0207.

By Direction of the Secretary.

Dated: January 6, 2006.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–293 Filed 1–12–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held February 8–10, 1006. The Committee will meet at 8 a.m. to 4:30 p.m. each day in the Oasis Room at the Hamilton Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide ongoing advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On February 8 and 9, the Committee will receive reports from program experts, assess the availability of health care and benefit services, receive reports from other federal departments and advocacy groups and review other initiatives designed to assist veterans who are homeless. On February 10, the Committee will review the 2005 annual report responses, review future issues for consideration at its next meeting and prepare to develop its 2006 annual report.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties or issues affecting homeless veterans. Such comments should be referred to the Committee at the following address:

Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 9, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–294 Filed 1–12–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 71, No. 9

Friday, January 13, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket Nos. 1976N–0052N (formerly 1976N–052N) and 1981N–0022 (formerly 81N–0022)]

RIN 0910–AF34, 0910–AF45

Phenylpropanolamine-Containing Drug Products for Over-the-Counter Human Use; Tentative Final Monographs

Correction

In proposed rule document E5–7646 beginning on page 75988 in the issue of Thursday, December 22, 2005, make the following corrections:

§ 310.545 [Corrected]

1. On page 75997, in the third column, in § 310.545(a)(6)(ii)(D), "Approved as of January 23, 2006" should read "Approved as of [date 30 days after date of publication in the **Federal Register**]."

2. On the same page, in the same column, in §310.545(a)(20)(ii), "Approved as of January 23, 2006" should read "Approved as of [date 30 days after date of publication in the **Federal Register**]."

3. On the same page, in the same column, in §310.545(d)(35), in the first line, "January 23, 2006" should read "[Date 30 days after date of publication in the **Federal Register**]".

[FR Doc. Z5–7646 Filed 1–12–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
January 13, 2006

Part II

Social Security Administration

20 CFR Part 404
Revised Medical Criteria for Evaluating Cardiovascular Impairments; Final Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AD48

Revised Medical Criteria for Evaluating Cardiovascular Impairments

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving cardiovascular impairments. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating cardiovascular impairments.

DATES: These rules are effective April 13, 2006.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Fran O. Thomas, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–9822 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION: We are revising and making final the rules we proposed for evaluating cardiovascular impairments in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on September 16, 2004 (69 FR 55874).

We provide a summary of the provisions of the final rules below, with an explanation of the changes we have made from the text in the NPRM. We then provide summaries of the public comments and our reasons for adopting or not adopting the recommendations in those comments in the section "Public Comments." The final rule language follows the Public Comments section.

What Programs Do These Final Regulations Affect?

These final regulations affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II and title XVI, these final regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act.
- Children of insured workers.
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above that results in . . .
title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual under age 18	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI benefits based on disability, the listings describe impairments that we consider severe

enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we do not use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that individuals are disabled or that they are still disabled. We will not deny your claim because your impairment(s) does not meet or medically equal a listing. If you are not doing work that is substantial gainful activity, and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you had qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled a listing. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule when we decide whether you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

Why Are We Revising the Listings for Cardiovascular Impairments?

We are revising these listings to update our medical criteria for evaluating cardiovascular impairments and to provide more information about how we evaluate them. On April 24, 2002, we published final rules in the **Federal Register** (67 FR 20018) that included technical revisions to some of the listings for cardiovascular impairments. Prior to this, we last published final rules making comprehensive revisions to the listings for cardiovascular impairments in the **Federal Register** on February 10, 1994 (59 FR 6468). Because we have not comprehensively revised the listings for this body system since 1994, we believe that we need to update the rules.

What Do We Mean by "Final Rules" and "Prior Rules"?

Even though these rules will not go into effect until 90 days after publication of this notice, for clarity, we refer to the changes we are making here as the "final rules" and to the rules that will be changed by these final rules as the "prior rules."

When Will We Start To Use These Final Rules?

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to new applications filed on or after the effective date of these rules and to claims pending before us, as we describe below.

As is our usual practice when we make changes to our regulations, we will apply these final rules on or after their effective date when we make a determination or decision, including those claims in which we make a determination or decision after remand to us from a Federal court. With respect to claims in which we have made a final decision, and that are pending judicial review in Federal court, we expect that the court's review of the Commissioner's final decision would be made in accordance with the rules in effect at the time of the administrative law judge's (ALJ) decision, if the ALJ's decision is the final decision of the Commissioner. If the court determines that the Commissioner's final decision is not supported by substantial evidence, or contains an error of law, we would expect that the court would reverse the final decision, and remand the case for further administrative proceedings pursuant to the fourth sentence of section 205(g) of the Act, except in those few instances in which the court determines that it is appropriate to reverse the final decision and award benefits without remanding the case for further administrative proceedings. In those cases decided by a court after the effective date of the rules, where the court reverses the Commissioner's final decision and remands the case for further administrative proceedings, on remand, we will apply the provisions of these final rules to the entire period at issue in the claim.

How Long Will These Final Rules Be Effective?

These rules will no longer be effective 5 years after the date on which they become effective, unless we extend them or revise and issue them again.

What General Changes Are We Making That Affect Both the Adult and Childhood Listings for Cardiovascular Impairments?

We are reorganizing and expanding the evaluation guidance we provide in the introductory text and improving its logical presentation. We are also removing reference listings from this body system. Reference listings are listings that are met by satisfying the criteria of another listing. For example, prior listing 4.08, for cardiomyopathies, was a reference listing that required evaluation under listings 4.02, Chronic heart failure, 4.04, Ischemic heart disease, 4.05, Recurrent arrhythmias, or 11.04, Central nervous system vascular accident. Instead of using reference listings, we are providing guidance in the introductory text stating that these impairments should be evaluated under the criteria for the affected body system. Where appropriate, we also provide references to specific listings. For example, in final section 104.00F4, we indicate that valvular heart disease should be evaluated under the criteria in 4.04 in part A, 104.02, 104.05, 104.06, or an appropriate neurological listing under 111.00ff.

How Are We Changing the Introductory Text to the Listings for Evaluating Cardiovascular Impairments in Adults?

4.00 Cardiovascular Impairments

We are expanding and reorganizing the introductory text to these listings to present the information in a more logical order, to provide additional guidance, and to reflect the new listings. The following is a detailed explanation of this material.

4.00A—General

In this section, we provide general information on what we mean by the term "a cardiovascular impairment" and what we consider when we evaluate cardiovascular impairments. Final section 4.00A1 incorporates the information found in prior 4.00B, with some minor editing. Final section 4.00A2 is taken from the first sentence of the first paragraph of prior 4.00A.

Final section 4.00A3 is a new section containing definitions of major terms we use in these final listings. In a nonsubstantive editorial revision to the NPRM text, we clarified the definition of a "consecutive 12-month period" to explain better when the 12-month period must occur.

4.00B—Documenting Cardiovascular Impairment

Final section 4.00B1 is based on the first sentence of prior section 4.00C and the second sentence of prior section 4.00A. In it, we provide information on the basic documentation that we need to evaluate cardiovascular impairments under the listings. Final sections 4.00B2–4.00B3 are based on the second and third paragraphs of prior section 4.00A. They include a discussion of the importance of longitudinal records and what we will do when a longitudinal record is not available because you have not received ongoing medical treatment. In final sections 4.00B4–4.00B6, we explain when we will wait for your condition to become stable before we ask for more evidence to help us evaluate the severity and duration of your impairment, explain when we may decide to purchase studies, and specify what studies we will not purchase. Much of this information is taken from prior sections 4.00C and 4.00D, with some rephrasing to clarify our meaning. For example:

- Final section 4.00B4a is based on prior section 4.00D1, and the examples in final sections 4.00B4a(i) and 4.00B4a(ii) are based on the first sentence of prior section 4.00D2.
- Final section 4.00B5 is based on the second sentence of prior section 4.00C2a and the third and sixth sentences of prior section 4.00C3.
- Final section 4.00B6 is based on information in prior section 4.00C4.

4.00C—Using Cardiovascular Test Results

In this section, we discuss various specialized cardiovascular tests and how we evaluate their results. In final section 4.00C1, we explain what an electrocardiogram (ECG) is. Our specifications for ECG tracings from prior section 4.00C1 are given in final section 4.00C2. In final section 4.00C3, we explain what the different kinds of exercise tests are and discuss their uses; the section includes information from various provisions throughout prior sections 4.00C and E, but we have also included additional guidance and definitions. Exercise testing is the most widely used testing for identifying the presence of myocardial ischemia and for estimating maximal aerobic capacity. However, as we state throughout the introductory text, we will consider all the relevant evidence and will not rely solely on the results of one type of test. In final section 4.00C4, we discuss the limitations of exercise tolerance tests (ETTs) as evidence for disability evaluation. We repeat our longstanding policy that ETTs estimate your ability to walk on a grade, bicycle, or move your arms in an environmentally controlled setting, so they do not correlate with the ability to perform other types of exertional activities and do not provide an estimate of your ability to perform activities required for work in all possible work environments or throughout a workday. Final section 4.00C5 is based on the second paragraph of prior section 4.00C3. In it, we explain what ETTs with measurement of maximal or peak oxygen uptake are and how they differ from other ETTs. We also explain what METs (metabolic equivalents) are and how they are calculated when not given in the report of an ETT with measurement of maximal or peak oxygen uptake.

In final section 4.00C6, we explain when we will consider purchasing an exercise test for case evaluation. Like final section 4.00B5, it is based on the second sentence of prior section 4.00C2a. As a result of a comment we describe below, we revised the language we proposed to clarify that we purchase an exercise test only when we need one to make a determination or decision.

In final section 4.00C7, we explain what we must do before we purchase an exercise test. The final rule combines a number of related provisions that were not grouped together in our prior rules and also adds a provision that provides additional safeguards for individuals that we ask to go for stress testing that we purchase.

In final section 4.00C7a, as in the third sentence of prior section 4.00C2a and the second sentence of prior section 4.00C2c, we continue to require that a medical consultant (MC), preferably one with experience in the care of patients with cardiovascular disease, review the evidence to determine whether performing an exercise test would put you at significant risk, or if there is some other medical reason not to do the test. (When an administrative law judge or an administrative appeals judge at the Appeals Council decides that a consultative examination is appropriate, the administrative law judge or the administrative appeals judge will ask the State agency to arrange for the examination. In this situation, an MC will still assess whether a consultative examination that includes exercise testing would involve a significant risk to you. This is the same procedure that we followed under our prior rules.)

Final section 4.00C7b corresponds to the fourth sentence of prior section 4.00C2e(1). In it, we explain that if you are under the care of a treating source for your cardiovascular impairment, this source has not performed an exercise test, and there are no reported significant risks to testing, we will request a statement from the source explaining why an exercise test was not done.

Final section 4.00C7c explains that an MC will generally give "great weight" to your treating source's opinion about the risk of exercise testing to you and will generally not override such an opinion; this policy was in the third sentence of prior section 4.00C2c. As in the NPRM, we are also including the provision that was in the fourth sentence of prior section 4.00C2c to require that in the rare situation in which the MC does override a treating source's opinion the MC must provide a written rationale documenting the reasons for overriding the opinion.

Final section 4.00C7d corresponds to the last sentence of prior section 4.00C2e(1). It explains that if you do not have a treating source or we cannot obtain a statement from your treating source, the MC is responsible for assessing the risk of exercise testing to you.

Final section 4.00C7e is new in our cardiovascular listings. It explains that, when we purchase an exercise test, we must send copies of your records to the medical source who conducts the test for us if he or she does not already have them. We also provide that this individual has the ultimate

responsibility for determining whether you would be at risk if you take the test.

In final section 4.00C8, we reorganize and modify the information on "significant risk" from the first sentence of prior section 4.00C2c. We are doing this because some of the so-called risk factors identified in the prior rule were not risks *per se*, but factors that affect proper interpretation of the tracings or situations that only temporarily preclude exercise testing. We identify several different categories that explain the various circumstances under which we will not purchase an ETT or will defer purchasing one. We base much of these provisions on the list of contraindications to exercise testing in the *Guidelines for Exercise Testing* published jointly by the American College of Cardiology (ACC) and the American Heart Association (AHA) in 1997 and updated in 2002. (See citations in the NPRM, 69 FR 55874, 55881–55882.) In response to a comment discussed in the public comments section of this preamble below, we have added a provision in the final rules, final section 4.00C8c, explaining that we will not purchase an ETT to document the presence of a cardiac arrhythmia. Final section 4.00C8d (proposed section 4.00C8c) is based on the first and second sentences of prior section 4.00C2d, the paragraph that explained when we will wait following specific cardiac events before we purchase an exercise test. Final section 4.00C8e corresponds to the last sentence of prior paragraph 4.00C2d; it explains that we will wait an appropriate period of time before we purchase an exercise test if you are deconditioned after an extended period of bedrest or inactivity. As in the NPRM, we removed the example of "2 weeks" from the prior rule to avoid any suggestion that a 2-week recovery period will generally be sufficient. The amount of time we may need to wait will depend on the particular facts of your case.

In final section 4.00C9, we explain when we consider exercise test results to be "timely." Final section 4.00C9a corresponds to the last sentence of prior section 4.00C2a, explaining that we consider exercise test results to be timely for 12 months after the date they are performed, provided there has been no change in your clinical status that may alter the severity of your cardiovascular impairment. In final 4.00C9b and 4.00C9c, we are expanding this topic to explain how we consider tests that are not timely.

Final section 4.00C10 discusses the performance requirements of tests that we purchase, while final section 4.00C11 discusses how we evaluate all ETT results. We retained these provisions from prior sections 4.00C2b and the first three sentences of prior section 4.00C2e(1). In final section 4.00C10a, we added a sentence that we did not include in the NPRM. The sentence explains that exercise tests may also be performed using echocardiography to detect stress-induced ischemia and left ventricular dysfunction. This additional guidance will make more complete our explanation of the types of ETTs we may purchase in appropriate cases.

We explain when ETTs are done with imaging and when we will consider purchasing such tests in final sections 4.00C12–4.00C13; the provisions are based on prior section 4.00C3. We provide new guidance on drug-induced stress tests, what they are, how they are used, and when we may purchase them, in final section 4.00C14.

Final section 4.00C15 includes the information found in prior section 4.00C4 on two types of cardiac catheterization reports, the details that these reports should contain, and what we consider when evaluating these reports. Final sections 4.00C16 and 4.00C17 describe Doppler exercise tests and when we will purchase them. In response to a comment described below, we revised final section 4.00C16 to clarify which details are required in reports of exercise Doppler studies and what information should be obtained. We specify that the tracings should be included with the report and that they must be annotated with the standardization used by the testing facility. In final section 4.00C17, as in the NPRM, we changed the requirement in the third paragraph of prior section 4.00E4 for walking on a "10 or 12 percent grade" to a "12 percent grade." This change makes our rules consistent with how the test is generally done. In a nonsubstantive editorial revision to the NPRM text, we have also clarified that you must exercise for "up to 5 minutes" to recognize that some individuals will be unable to exercise for a full 5 minutes. The language we proposed in the NPRM could have been misread to mean that we require everyone to exercise for 5 minutes even if they are unable to do so. We also provide that, because this is an exercise test, we must evaluate whether such testing would put you at significant risk, in accordance with the guidance found in 4.00C6, 4.00C7, and 4.00C8. Finally, in a technical clarification, we revised the heading of final section 4.00C17 from the proposed heading to change the word "should" to "must." This is because the final rule (like the NPRM) specifies what we require in any exercise Doppler test we purchase.

In final sections 4.00D–4.00H, we provide general medical information on the various cardiovascular impairments and information on how we evaluate each of them using the final listing criteria. We incorporate information found in prior section 4.00E and guidance we have provided to our adjudicators in instructions that were not in the prior listings. We also add some new information, as described below.

4.00D—Evaluating Chronic Heart Failure

In final section 4.00D1, for chronic heart failure, we explain what chronic heart failure is and the differences between the two main types of chronic heart failure—systolic and diastolic. Final section 4.00D1b is based on prior section 4.00E1. We explain that we will now evaluate cor pulmonale under respiratory system listing 3.09, rather than listing 4.02, as it is a heart condition resulting from a respiratory disorder. (In a related change, described later in this preamble, we are also removing a cross-reference to the cardiovascular listings from listing 3.09.)

In final sections 4.00D2 and 4.00D3, we describe the evidence that we need for evaluating chronic heart failure and explain how ETTs may be used to evaluate individuals with known chronic heart failure. We added a reference in final section 4.00D3 to the section on when we will consider the purchase of an ETT (final section 4.00C6). In response to a comment on the last sentence of proposed section 4.00D3, we revised the sentence to clarify our intent, that ST segment changes from digitalis use in the treatment of chronic heart failure do not preclude the purchase of an ETT in cases involving chronic heart failure.

In the NPRM, proposed section 4.00D4 was a single paragraph that explained what we mean by "periods of stabilization" in listing 4.02B2. In the final rules, we have changed the heading of the section to "How do we evaluate CHF using 4.02?" and expanded the section to include four subparagraphs. The changes are not substantive, but only clarify generally how we use listing 4.02. They also explain how we use a criterion that is common to listings 4.02B3c and 4.04A3: In the NPRM, we explained how the criterion applies in listing 4.04A3 but inadvertently did not include the same explanation for listing 4.02B3c.

In final section 4.00D4a, and consistent with the provisions of final

section 4.00D2, we explain that we need objective evidence of chronic heart failure. In final section 4.00D4b, we repeat the requirement of final listing 4.02 that your impairment must satisfy one of the criteria in both A and B of that listing to meet the listing. Neither of these new sections provides any additional substantive guidance that was not already inherent in the proposed rules; however, they do explain more clearly how to use final listing 4.02.

Final section 4.00D4c corresponds to proposed section 4.00D4. Based on a suggestion from a commenter, we changed the duration of the periods of stabilization from 5 days to 2 weeks to allow for variability during medication titrations. We discuss the comment and our reasons for making the change in the public comments section later in this preamble.

Final section 4.00D4d addresses the criterion that is common to final listings sections 4.02B3c and 4.04A3: a requirement for a 10 mmHg decrease in systolic blood pressure below the baseline systolic blood pressure. We provided a detailed explanation of this provision in proposed section 4.00E9e, which addressed ischemic heart disease, but inadvertently omitted the same explanation for the virtually identical provision for CHF. Therefore, in these final rules, we moved the text of proposed section 4.00E9e to final section 4.00D4d because it comes first in the introductory text. In final section 4.00E9e, we now include only a cross-reference to the provisions we moved to final 4.00D4d instead of repeating the entire paragraph.

4.00E—Evaluating Ischemic Heart Disease

In final section 4.00E, for ischemic heart disease (IHD), we incorporate most of the information in prior section 4.00E3. We explain what IHD is and what causes chest discomfort of myocardial origin in final sections 4.00E1 and 4.00E2. We move and revise slightly the material on chest discomfort of myocardial ischemic origin from prior section 4.00E3e to final section 4.00E2 and explain that individuals with IHD may experience manifestations other than typical angina pectoris. We also deleted the final sentence in prior section 4.00E3e as it was not useful adjudicative guidance. We discuss the characteristics of typical angina pectoris in final section 4.00E3. This section is based on and incorporates material from prior section 4.00E3a. In final section 4.00E4, we include a definition of, and information on, atypical angina, which we included in our discussion of anginal equivalent in prior section 4.00E3b. We discuss anginal equivalent in final section 4.00E5. The material on anginal equivalent is based on prior section 4.00E3b, but we explain that it is essential to establish objective evidence of myocardial ischemia in order to differentiate anginal equivalent shortness of breath (dyspnea) that results from myocardial ischemia from dyspnea that results from non-ischemic or non-cardiac causes. Final section 4.00E6, on variant angina, is based on prior section 4.00E3c, but we discuss in greater detail what variant angina is, how it is diagnosed and treated, and how we will evaluate it. We also state that vasospasm that is catheter-induced during coronary angiography is not variant angina.

In final section 4.00E7, we expand the discussion of silent ischemia that appeared in prior section 4.00E3d. We explain what silent ischemia is and why it may occur. We describe the situations in which it most often occurs, how it may be documented using ambulatory ECG monitoring (Holter) equipment, and how we evaluate it. We move the material on chest discomfort of non-ischemic origin from prior section 4.00E3f to final section 4.00E8. We add acute anxiety or panic attacks to the examples of noncardiac conditions that may produce symptoms mimicking myocardial ischemia since we recognize that mental disorders may produce physical symptoms.

In final section 4.00E9, we explain how we evaluate IHD using the criteria in listing 4.04. In a nonsubstantive editorial change from the NPRM text, we specify in final section 4.00E9b how ischemia is confirmed in possible false-positive test situations, to conform to the language in final section 4.00E9d. We changed the reference to "appropriate medically acceptable imaging techniques" to "radionuclide or echocardiogram confirmation" because these are the appropriate medically acceptable imaging techniques for diagnosing ischemia in possible false-positive situations. We also added a reference to final sections 4.00C12 and 4.00C13, which discuss ETTs done with imaging.

In the next-to-last sentence of the final section 4.00E9d, we also added a reference to echocardiography in addition to the reference to radionuclide testing we had already included in the NPRM. Again, radionuclide and echocardiogram confirmation are the appropriate medically acceptable imaging techniques for diagnosing ischemia in possible false-positive situations. We also added a reference to final sections 4.00C12 and 4.00C13; this will make final sections 4.00D4b and 4.00D4d consistent with each other. As already noted, we moved the text we included in proposed section 4.00E9e to final section 4.00D4d because final listing sections 4.02B3c and 4.04A3 are identical. Instead of repeating the same provisions in final sections 4.00D4d and 4.00E9e, we abbreviate the explanation of the 10 mmHg decrease in systolic blood pressure required in final listing 4.04A3 and add a reference to the detailed discussion in final section 4.00D4d.

We also clarified and moved the explanation of what we mean by "nonbypassed" from proposed section 4.00E9g into a new section, final section 4.00E9h, because it is a different subject from what is addressed in final section 4.00E9g.

4.00F—Evaluating Arrhythmias

In final section 4.00F, we provide information on evaluating arrhythmias. We explain what arrhythmias are and discuss the different types in final sections 4.00F1–4.00F2. We made a nonsubstantive editorial revision, rearranging the NPRM material by combining the provisions of proposed sections 4.00F3 and 4.00F4 in final section 4.00F3 under the heading "How do we evaluate arrhythmias under 4.05?" Thus, final section 4.00F3a corresponds to proposed section 4.00F4, on the use of listing 4.05 when there is an implanted cardiac defibrillator, and final sections 4.00F3b and 4.00F3c correspond to proposed section 4.00F3. In final section 4.00F3b, we explain what we mean by "near syncope" in final listing 4.05. In final section 4.00F3c, we add information on the evidence we need to document the required association between your syncope or near syncope and your cardiac arrhythmia. Because of a comment that tilt-table testing is frequently used to establish the presence of arrhythmia, we reexamined our position on tilt-table testing. In the final rules, we removed the proposed prohibition for the use of tilt-table testing as acceptable documentation of arrhythmia and included new guidance for using such testing. We specify that the tilt-table testing must be done concurrently with an ECG, and that the symptom of syncope or near syncope must be associated with the arrhythmia.

We redesignated proposed section 4.00F5 as final section 4.00F4, in which we provide information on implantable cardiac defibrillators and how we will evaluate arrhythmias if you have an implanted cardiac defibrillator, to

reflect the foregoing reorganization of the proposed provisions.

4.00G—Evaluating Peripheral Vascular Disease

In final section 4.00G, the section on peripheral vascular disease (PVD), we incorporate the information in prior section 4.00E4 and provide additional information and guidance on the evaluation of PVD based on questions we have received in the past. Final section 4.00G1 explains what we mean by PVD and describes its usual effects. In a nonsubstantive editorial revision, we rearranged the third sentence and added a description of the effects of advanced PVD. In final section 4.00G2, we explain how we assess the limitations resulting from PVD. This section is based on prior section 4.00E4, and explains that we will evaluate limitations based on your symptoms, together with physical findings, Doppler studies, other appropriate non-invasive studies, or angiographic findings. We also explain that we will evaluate amputations resulting from PVD under the musculoskeletal body system listings.

In final section 4.00G3, we define "brawny edema" and explain how it is different from pitting edema, adding to the NPRM language a brief explanation of the term "pit." As in the NPRM, we also clarify that pitting edema does not satisfy the requirements of listing 4.11A. In a nonsubstantive editorial revision, we combined proposed sections 4.00G4 and 4.00G5, on what lymphedema is and what causes it, and the guidance on the evaluation of lymphedema into one section devoted to lymphedema, final section 4.00G4. The final rules provide that we will evaluate lymphedema under the listing for the underlying cause or consider whether the condition medically equals a cardiovascular listing, such as listing 4.11, or a musculoskeletal listing in 1.00. We also explain how we evaluate the condition in cases in which the listings are not met or medically equaled.

In the final rules, we rearranged proposed sections 4.00G6–4.00G12 to present the information more logically and to follow the order of final listings 4.11 and 4.12 more closely. We moved proposed section 4.00G8, on when we will obtain exercise Doppler studies for the evaluation of peripheral arterial disease (PAD), which we took from prior section 4.00E4, to final section 4.00G5. We moved proposed section 4.00G11 to final section 4.00G6. That section describes other studies that are helpful in evaluating PAD, particularly the recording ultrasonic Doppler unit, and the value of reviewing pulse wave tracings from these studies when evaluating individuals with diabetes mellitus or other diseases with the potential for similar vascular changes.

In final section 4.00G7, we combine proposed sections 4.00G6, 4.00G7, and 4.00G9 to describe how we evaluate PAD under final listing 4.12. In final section 4.00G7a (proposed section 4.00G6), we clarify how we consider blood pressures taken at the ankle. We will use the higher of the posterior tibial or dorsalis pedis systolic blood pressures measured at the ankle, because the higher pressure is more significant in assessing the extent of arterial insufficiency.

In final section 4.00G7b (proposed section 4.00G7), we take information from the third paragraph of prior section 4.00E4 on how the ankle/brachial ratio is determined for purposes of evaluating a claim under final listing 4.12. We also explain that the ankle and brachial pressures do not have to be taken on the same side of the body because we will use the higher brachial pressure measured, and we provide information on the various techniques used for obtaining ankle systolic blood pressures. For medical accuracy, we removed "duplex scanning with color imaging" from the NPRM's list of techniques for obtaining ankle systolic blood pressures because, although it is done in conjunction with testing, it does not measure pressures. We also specify that we will request any available tracings from those listed techniques, so that we can review them.

In final section 4.00G7c (proposed section 4.00G9), we add guidance on the use of toe pressures for evaluating intermittent claudication in individuals with abnormal arterial calcification or small vessel disease, as may happen if you have diabetes mellitus or certain other diseases. In the presence of abnormal arterial calcification or small vessel disease, the blood pressure at the ankle may be misleadingly high, but the toe pressure is seldom affected by these vascular changes. We also add two new criteria in final listing 4.12 using toe pressure and toe/brachial pressure ratio.

We redesignated the remaining sections of proposed 4.00G because of the foregoing reorganization. In final section 4.00G8 (proposed section 4.00G10), we explain how toe pressures are measured. In final section 4.00G9 (proposed section 4.00G12), we discuss the similarities between peripheral grafting and coronary grafting and explain how we will evaluate cases involving peripheral grafting.

4.00H—Evaluating Other Cardiovascular Impairments

In final section 4.00H, we provide guidance on evaluating other cardiovascular impairments. In final section 4.00H1, we discuss the evaluation of hypertension, rephrasing material found in prior section 4.00E2. We explain what congenital heart disease is and provide guidance on how we will evaluate symptomatic congenital heart disease in final section 4.00H2, combining proposed sections 4.00H2 and 4.00H3 in a nonsubstantive editorial revision. In final section 4.00H3 (proposed section 4.00H4), we provide guidance on what cardiomyopathy is and how we will evaluate it. We provide guidance on the evaluation of valvular heart disease in final section 4.00H4 (proposed section 4.00H5). We discuss the evaluation of heart transplant recipients in final section 4.00H5 (proposed section 4.00H6). In final section 4.00H6 (proposed section 4.00H7), we explain when an aneurysm has "dissection not controlled by prescribed treatment" as required under final listing 4.10. We add guidance on what hyperlipidemia is and how we will evaluate it in final section 4.00H7 (proposed section 4.00H8).

Because of a comment described below in the public comments section of this preamble, we added a new section, final section 4.00H8, to discuss Marfan syndrome and how we evaluate its manifestations.

4.00I—Other Evaluation Issues

In this section, we provide guidance on a variety of issues. In final section 4.00I1, we explain the evaluation of obesity's effect on the cardiovascular system. The guidance in this section is taken from prior section 4.00F, with minor edits, and incorporates additional guidance we included in Social Security Ruling 02–1p ("Titles II and XVI: Evaluation of Obesity," 67 FR 57859 (2002)). Final section 4.00I2 explains how we relate treatment to functional status. This section is based on prior section 4.00D; we have deleted some language that dealt with listing-level impairment from the prior section and made nonsubstantive editorial changes. If the anticipated improvement might affect the determination or decision in the case, we will wait an appropriate length of time in order to evaluate the results of the treatment. Finally, in final section 4.00I3, we explain how we evaluate cardiovascular impairments that do not meet a cardiovascular listing. This section is based on the fourth paragraph of prior section 4.00A.

How Are We Changing the Listings for Evaluating Cardiovascular Impairments in Adults?

4.01—Category of Impairments, Cardiovascular System

We are deleting the following current cardiovascular listings because they are reference listings that direct adjudicators to evaluate these impairments and their effects under other listings: 4.02C, Cor pulmonale; 4.03, Hypertensive cardiovascular disease; 4.06C, Symptomatic congenital heart disease with chronic heart failure; 4.06D, Symptomatic congenital heart disease with recurrent arrhythmias; 4.07, Valvular heart disease or other stenotic defects, or valvular regurgitation; 4.08, Cardiomyopathies; 4.10B, Aneurysm of aorta or major branches with chronic heart failure; 4.10C, Aneurysm of aorta or major branches with renal failure; and 4.10D, Aneurysm of aorta or major branches with neurological complications. As we have done with other body system listings, we are deleting these reference listings because they are redundant. However, we provide guidance in the introductory text of the listing on how we will evaluate these impairments using other listings.

The following is a detailed explanation of the final listing criteria.

4.02—Chronic heart failure

We change the format of prior listing 4.02, creating two new sections, 4.02A and 4.02B. For the listing to be met, both the 4.02A and 4.02B requirements must be satisfied. We move the required imaging findings that are generally associated with the clinical diagnosis of heart failure from prior listings 4.02A and 4.02B to final listings 4.02A1 and 4.02A2 and revise them to reflect the anatomical changes associated with systolic and diastolic dysfunction, respectively; in a minor edit, we replaced the reference we included in proposed sections 4.02A1 and 4.02A2 with a brief explanation of what we mean by "a period of stability." The prior listing had different criteria for heart failure in sections 4.02A and 4.02B and did not provide criteria for both systolic and diastolic failure. Additionally, because the criterion in prior listing 4.02A of 5.5 cm is generally considered the high end of normal for heart size, we change the left ventricular diastolic diameter to left ventricular end diastolic dimensions greater than 6.0 cm. This change more clearly establishes an enlarged heart that would result in the signs and symptoms associated with listing-level severity.

We also redesignate prior listing 4.02A as final listing 4.02B1 and revise the criteria. The prior listing included a description of heart failure and referred to the "inability to carry on any physical activity," which implied that the individual must be bedridden. Our program experience shows that this listing was set at too high a level of severity and was little used. We have removed the description of heart failure and rephrased the criteria in final listing 4.02B1 to describe an "extreme" limitation; that is, an impairment that very seriously limits your ability to independently initiate, sustain, or complete activities of daily living. This is modeled after our other rules that define listing-level severity in terms of an "extreme" limitation; for example, the definition of "inability to ambulate effectively" in the musculoskeletal listings, section 1.00A2b(1). This listing may be used only if the performance of an exercise test would present a significant risk to you.

We add a new criterion in final listing 4.02B2 to include individuals who have frequent acute episodes of heart failure, showing that the heart failure is not well-controlled by the prescribed treatment. This also provides another avenue that allows us to make favorable determinations or decisions in certain cases without ETTs.

We redesignate prior listing 4.02B1 as final listing 4.02B3. We also revise it by specifying in final listing 4.02B3a the symptoms of chronic heart failure that might cause termination of an ETT. This change makes it clear that the inability to exercise at a workload equivalent to 5 METs could be due to symptoms, as well as the signs listed in final 4.02B3b through 4.02B3d. We change the "three or more multiform beats" in prior listing 4.02B1a to "increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute" in final listing 4.02B3b. This provides broader criteria for terminating the test on account of exercise-induced (and potentially dangerous) ventricular ectopy (an arrhythmia in which the heartbeat is being triggered inappropriately by the ventricle, causing premature ventricular contraction).

In final listing 4.02B3c, we eliminate the criterion for "[f]ailure to increase systolic blood pressure by 10 mmHg," from prior listing 4.02B1b because your blood pressure might be temporarily elevated at "baseline" due to anxiety, and the blood pressure response could be blunted by medications. Instead, we specify only an amount of decrease from the baseline systolic blood pressure or the preceding systolic pressure measured during exercise, due to left ventricular dysfunction, despite an increase in workload, at which the test should be terminated. In the final rule, we made minor revisions to the language of listings 4.02B3c and 4.04A3, which were slightly different from each other, to make them match exactly as we originally intended. These revisions do not substantively change either of the criteria, but are only for language consistency. We redesignate prior listing 4.02B1c, for signs attributable to inadequate cerebral perfusion, as final listing 4.02B3d, but make no other changes to it. We remove prior listing 4.02B2, the functional criterion that calls for "marked limitation of physical activity," because it is unnecessary. If you satisfy one of the final listing 4.02A criteria and one of the final listing 4.02B3 criteria, a very seriously limited level of physical activity is implied, so it is not necessary to have a criterion describing this limitation.

4.04—Ischemic Heart Disease

In the header text, we change "chest discomfort" to "symptoms" because some individuals have discomfort in other parts of their body, such as an arm, their back, or their neck, or have other symptoms, such as shortness of breath (dyspnea), associated with ischemia. In final listing 4.04A1, we remove the phrase "and that have a typical ischemic time course of development and resolution (progression of horizontal or downsloping ST depression with exercise)" which appeared in prior listing 4.04A1 because we believe it is unnecessary. We also eliminate the prior listing 4.04A2 criterion. The ACC/AHA *Guidelines for Exercise Testing* indicate that an upsloping ST junction depression, as described in the prior criterion, has less specificity (more false-positive results) and favors the more commonly used horizontal or downsloping ST depression. We redesignate the subsequent criteria.

In final listing 4.04A2 (prior listing 4.04A3), we specify that the ST elevation must occur in "non-infarct" leads; that is, leads that do not reflect previous injury due to an infarction. This is because ST elevation during exercise commonly occurs with a ventricular aneurysm resulting from an infarction, without ischemia being present. We also reduce the requirement for the ST elevation during recovery from "3 or more minutes" to "1 or more minutes." We believe that this ST elevation in non-infarct leads is of such significance that ST elevation for 1 minute or more during recovery is sufficient to show an impairment of listing-level severity. In listing 4.04A3

(prior listing 4.04A4), we eliminate the phrase "[f]ailure to increase systolic pressure by 10 mmHg" for the reasons previously discussed under the explanation of listing 4.02B3c. We also specify that there must be a decrease of 10 mmHg below baseline or the preceding systolic pressure measured during exercise due to left ventricular dysfunction, despite an increase in workload, because exercise normally raises blood pressure and a decrease during exercise reflects the presence of ischemia. As already noted, we made minor revisions to the language of final listing 4.04A3 to make it the same as final listing 4.02B3c.

We revise prior listing 4.04A5, but make no substantive changes to it, to make clear that the "perfusion defect" represents ischemia and to provide for use of imaging techniques other than radionuclide perfusion scans. We also redesignate it as final listing 4.04A4.

We are adding a new listing 4.04B criterion. The new criterion provides that your impairment meets the listing if you have three separate ischemic episodes, each requiring revascularization (angioplasty or bypass surgery) or not amenable to revascularization, within a consecutive 12-month period. Because this is a new, additional listing criterion, it will permit us to allow some cases more quickly.

In the header text for final listing 4.04C, we added the phrase "or other appropriate medically acceptable imaging" because this area of technology is rapidly improving. Thus, we are providing for the likelihood that imaging other than angiography will soon be able to identify the extent of blockage resulting from coronary artery disease. We also change the phrase "evaluating program physician" from the prior listing to "MC" to be consistent with our terminology throughout these final rules and in other regulations. Because not everyone who has the cited findings has ischemia, we add that this listing can be used only "in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test."

We also revise the prior listing 4.04C1e criterion, "[t]otal obstruction of a bypass graft vessel," to change it from "total obstruction" to "70 percent or more narrowing." This conforms to the criterion in prior listing 4.04C1b for a nonbypassed coronary artery, which we are not changing. When we originally published the prior rule, it was not possible to tell how obstructed bypass graft vessels were. Imaging techniques have improved, making it possible to identify lesser degrees of obstruction of a bypass graft vessel. In the final rules, we revise the prior listing 4.04C2 criterion for functional limitations using substantively the same language as in final listing section 4.02B1.

4.05—Recurrent Arrhythmias

We change the requirement for "uncontrolled repeated episodes of cardiac syncope or near syncope" to "uncontrolled recurrent episodes" using the same definitions for the terms "uncontrolled" and "recurrent" in final section 4.00A3 that we use throughout these final rules. We remove the phrase "and arrhythmia" that followed "near syncope" in prior listing 4.05, because it was redundant; listing 4.05 is for "[r]ecurrent arrhythmias." We also add language that allows documentation "by other appropriate medically acceptable testing, coincident with the occurrence of syncope or near syncope" to provide for the use of any appropriate medically acceptable tests developed for arrhythmia in the future, and refer to final section 4.00F3c, the paragraph that describes how we consider test findings in cases of arrhythmia.

4.06—Symptomatic Congenital Heart Disease

Because we are eliminating prior reference listings 4.06C and 4.06D, we redesignate prior listing 4.06E as final listing 4.06C. In final listing 4.06C, we no longer refer to "mean" pulmonary artery pressure, as it is the relationship between the pulmonary artery pressure and the systemic arterial pressure that is important. We also clarify that the systolic pressures are to be used.

4.09—Heart Transplant

We change the name from "Cardiac transplantation" to "Heart transplant" consistent with terminology in our other listings. We also change the phrase "reevaluate residual impairment" to "evaluate residual impairment," as more accurate, since we would not have evaluated the residual impairment earlier than the end of the 12-month period following the transplant. In addition, we remove the guidance in the prior listing to evaluate the residual impairment under listings "4.02 to 4.08," and substitute the phrase "the appropriate listing." This clarifies that other listings besides listings 4.02 through 4.08 may apply, including listings in other body systems.

4.10—Aneurysm of Aorta or Major Branches

As we have already noted, we remove listings 4.10B through 4.10D because they are reference listings. We incorporate prior listing 4.10A into the header text, because it was the sole remaining listing. Because dissection of an aorta must be either acute or chronic, we remove those descriptors as unnecessary in this context. We also change the description of treatment to "prescribed treatment," which includes both medical and surgical methods, and include a cross-reference to final section 4.00H6, the section that explains what a dissecting aneurysm is and when we consider that it is not controlled by prescribed treatment.

4.11—Chronic Venous Insufficiency

In final listing 4.11A, we add language to clarify what we mean by "extensive" brawny edema. We provide that brawny edema is "extensive" if it involves at least two-thirds of the leg between the ankle and knee. In response to a comment, we removed the word "approximately" from this criterion and added an additional descriptor, "or the distal one-third of the lower extremity between the ankle and hip" for further clarity. In final listing 4.11B, as in the NPRM, we refer only to "prescribed treatment," which includes both medical and surgical methods. This is a clarification of the prior listing, which used the phrase "prescribed medical or surgical therapy." These changes also help to clarify that the phrase "that has not healed following at least 3 months of prescribed treatment" applies only to "persistent" ulceration.

4.12—Peripheral Arterial Disease

In final listing 4.12, we remove prior listing 4.12A because arteriograms are generally used to determine when and where surgical intervention is needed and, if surgery is performed, it is unlikely that the duration requirement would be met. If intermittent claudication continues following surgery, we will evaluate it under the remaining criteria of this listing. We redesignate prior listings 4.12B1 and 4.12B2 as final listings 4.12A and 4.12B. (Note: We removed prior listing 4.12C, amputation, when we published the final musculoskeletal rules, which were effective February 19, 2002. See 66 FR 58010.)

We also revise the criteria on the methods for establishing peripheral arterial disease by substituting the phrase "appropriate medically acceptable imaging" for the prior reference to "Doppler studies." In final listing 4.12B (prior listing 4.12B2), we eliminate the phrase "at the ankle" following "pre-exercise level" because it is redundant.

We also add two new listings, final listings 4.12C and 4.12D, for the use of resting toe systolic blood pressures and

resting toe/brachial systolic blood pressure ratios. As we explained under the discussion of final section 4.00G7c, ankle pressures can be misleadingly high when you have a disease that results in abnormal arterial calcification or small vessel disease, but the toe pressure is seldom affected by these vascular changes.

How Are We Changing the Introductory Text to the Listings for Evaluating Cardiovascular Impairments in Children?

We expand and reorganize the introductory material in 104.00 to provide additional guidance and to reflect the final listings. Because of the extensive information and guidance included in the introductory text for the listings, and as in the adult listings in part A, we group information on various subjects and related issues together in separate sections. Except for minor changes to refer to children, we have repeated much of the introductory text of final 4.00 in the introductory text to final 104.00. This is because the same basic rules for establishing and evaluating the existence and severity of cardiovascular impairments in adults also apply to children. Because we have already described these provisions and revisions under the explanation of 4.00, the following discussions describe only those provisions or revisions that are unique to the childhood rules or that require further explanation.

104.00A—General

In final section 104.00A3, we explain the same terms and phrases as in final section 4.00A4, but also include an explanation of the phrase "currently present," which appears only in the childhood listings for reasons we explain below.

104.00B—Documenting Cardiovascular Impairments

In final section 104.00B5, we specify that "[w]e will make a reasonable effort to obtain any additional studies from a qualified medical source in an office or center experienced in pediatric cardiac assessment." In final sections 104.00B7a and 104.00B7b, we include the discussion, with some nonsubstantive editorial changes, on the use of exercise testing in children that was found in the third and fourth paragraphs of prior section 104.00B. In final section 104.00B7c, we include a cross-reference to the guidance on ETT requirements and usage found in final section 4.00C in part A. We did not repeat that section in part B because it addresses cardiovascular tests used mainly for the diagnosis and evaluation of ischemia, which is rare in children. However, if a child has IHD, documentation and evaluation are the same as for an adult. (See 20 CFR 416.925(b)(1).)

104.00C—Evaluating Chronic Heart Failure

In final section 104.00C1, we do not differentiate between systolic and diastolic dysfunction, as we do with adults in final section 4.00D1a, because in children it is unlikely that a specific type of dysfunction will be clearly identified. For children, certain laboratory findings of cardiac functional and structural abnormality in support of the diagnosis of CHF are sufficient. In final section 104.00C2a, we also update the findings that represent cardiomegaly or ventricular dysfunction in children. We use the phrase "fractional shortening" rather than "shortening fraction" in the discussion of left ventricular dysfunction and explain what it is. We retain in final section 104.00C2a(i)(*C*) the chest x-ray findings cited in the second paragraph of prior section 104.00E. In final section 104.00C2b, we include the information found in the first and third paragraphs of prior section 104.00E with some rephrasing for clarity but no substantive changes.

104.00D—Evaluating Congenital Heart Disease

In final section 104.00D, we move the list of examples of congenital heart defects from the second paragraph of prior section 104.00A to final section 104.00D1, with some minor edits. We make a nonsubstantive editorial revision in final section 104.00D2, combining proposed sections 104.00D2, 104.00D3, and 104.00D4 into a discussion of how we will evaluate symptomatic congenital heart disease. In final section 104.00D2a (proposed section 104.00D4), we repeat the discussion of symptomatic congenital heart disease in final section 4.00H3 with minor changes to address children. We delete the information contained in the third paragraph of prior section 104.00D, which discusses pulmonary vascular obstructive disease, because it is rarely seen due to the improved diagnosis and treatment of congenital heart disease. In final section 104.00D2b (proposed section 104.00D2), we state that we will accept pulse oximetry measurements instead of arterial O_2 values when evaluating children under final listing 104.06A2. However, if the arterial O_2 values are available, they are preferred because they are the most accurate. In final section 104.00D2c (proposed section 104.00D3) we list examples of congenital heart defects that we will evaluate under final listing 104.06D. We took this material from the first and second paragraphs of prior section 104.00D.

104.00E—Evaluating Arrhythmias

This section is substantively identical to the corresponding section in the final adult listing, 4.00F, with minor editorial changes that refer specifically to children.

104.00F—Evaluating Other Cardiovascular Impairments

In final section 104.00F, we address other cardiovascular impairments that may affect children and that are not already discussed in previous sections, such as chronic rheumatic fever or rheumatic heart disease, omitting some that are more often seen in adults, such as peripheral vascular disease. If necessary, the effects of any such cardiovascular impairment on a child can be evaluated using the part A listings, as we explain in § 416.925(b) of our regulations and in the introductory paragraph to the table of contents in part A of the listings.

Final section 104.00F contains much of the same information found in final section 4.00H, with the following differences.

We address ischemia only briefly in section 104.00F1, instead of discussing it in detail as in the adult rules, because it is rare in children. Because the documentation and evaluation are the same as for adults, we refer to final section 4.00E and final listing 4.04 in part A. As we have already noted, these provisions are also applicable to ischemia in children. Final section 104.00F2, on how we will evaluate hypertension, is similar to final section 4.00H1, but we have modified it to reflect the particular effects of hypertension in children.

In the preamble to the NPRM, we listed the reference listings that we proposed to remove as redundant and said that we were including guidance on how to evaluate the affected impairments in the introductory text. See 69 FR 55880. However, we inadvertently omitted a discussion of cardiomyopathies (included in prior listing 104.08) from the proposed introductory text. To correct this oversight, we have added a section on cardiomyopathy, final section 104.00F3. The final rule is the same as the corresponding adult section, final section 4.00H3, with minor changes to refer to children.

In final section 104.00F6, we include the information on chronic rheumatic fever and rheumatic heart disease found in prior section 104.00G. We refer to the

appropriate cardiovascular listings for the evaluation of chronic heart failure and arrhythmias associated with rheumatic heart disease. In section 104.00F8, we discuss how we will evaluate Kawasaki disease (formerly called Kawasaki syndrome), which usually develops before age 5. We have also added a section on Marfan syndrome in final section 104.00F10; it is the same as final section 4.00H8 in part A.

How Are We Changing the Listings for Evaluating Cardiovascular Impairments in Children?

104.01 Category of Impairments, Cardiovascular System

We are deleting the following prior listings: 104.02C, Chronic heart failure with recurrent arrhythmias; 104.02D3, Chronic heart failure with growth disturbance as described under the criteria in 100.00; 104.03, Hypertensive cardiovascular disease; 104.06B, Congenital heart disease with chronic heart failure with evidence of ventricular dysfunction; 104.06C, Congenital heart disease with recurrent arrhythmias; 104.06E, Congenital heart disease with congenital valvular or other stenotic defects, or valvular regurgitation; 104.06G, Congenital heart disease with growth failure; 104.07, Valvular heart disease or other stenotic defects, or valvular regurgitation; 104.08, Cardiomyopathies; 104.13B, Chronic rheumatic fever or rheumatic heart disease with evidence of chronic heart failure; 104.13C, Chronic rheumatic fever or rheumatic heart disease with recurrent arrhythmias; 104.14, Hyperlipidemia; and 104.15, Kawasaki syndrome. With the exception of listings 104.07B, 104.14B, 104.14C, 104.14D and 104.15A, these are reference listings that we are deleting because they are redundant. However, we provide guidance in the introductory text of the listing on how we will evaluate these impairments using other listings.

We are deleting prior listing 104.07B, Critical aortic stenosis in newborn, because treatment has improved such that this condition would not usually be expected to result in limitations of listing-level severity for 12 months. When necessary, this impairment can be evaluated using final listing 104.06D. We also are deleting the prior hyperlipidemia listings that are not reference listings, prior listings 104.14B, 104.14C, and 104.14D, because there is better treatment now available for hyperlipidemia making it less likely to result in limitations of listing-level severity. We will evaluate hyperlipidemia's effect on a child under a listing for the affected body system when appropriate. We also delete prior listing 104.15A, Kawasaki syndrome with major coronary artery aneurysm, because generally such an aneurysm would be producing symptoms of heart failure or ischemia, which can be evaluated under the appropriate listings for those effects.

The following is a detailed explanation of the final listing criteria.

104.02—Chronic Heart Failure

We add language to the header text to clarify that the heart failure must occur "while on a regimen of prescribed treatment." Final listings 104.02A and 104.02B and their associated tables are the same as the prior listings. Because we deleted prior reference listing 104.02C, Recurrent arrhythmias, which refers the adjudicator to listing 104.05, we are redesignating prior listing 104.02D, Growth disturbance, as final listing 104.02C. We also add language to the first two growth disturbance criteria to clarify that the weight loss must be currently present and have persisted for 2 months or longer. This is to clarify that we will not find that a child is disabled under this listing simply because of a short-term growth disturbance that occurred sometime in the past. We also specify that we will use the current growth charts issued by the National Center for Health Statistics in the Centers for Disease Control and Prevention. This is consistent with the growth impairment listings in 100.00. The current growth charts are available online at: *http://www.cdc.gov/growthcharts/*.

104.05—Recurrent Arrhythmias

We use the same language as in final listing 4.05.

104.06—Congenital Heart Disease

In the header text of this section, we add language on documentation by appropriate medically acceptable imaging or cardiac catheterization, to make it parallel to the adult listing. In final listing 104.06A1, we revise the language on the frequency of the hematocrit finding to better capture persistence of the finding. Because we remove prior reference listings 104.06B and 104.06C, we redesignate prior listing 104.06D as final listing 104.06B. In this listing, we no longer refer to "mean" pulmonary artery pressure, for the reason discussed under the explanation of final listing 4.06. We also clarify that we will use the systolic pressures for purposes of this listing. We remove prior listing 104.06E, because it was a reference listing, and redesignate prior listing 104.06F as final listing 104.06C. We also revise the language of prior listing 104.06C to reflect the definition of an "extreme" limitation, found in § 416.926a(e)(3) of our regulations.

Finally, we remove prior reference listing 104.06G, redesignate prior listing 104.06H as final listing 104.06D and remove the references to two specific cardiovascular listings to allow for reference to any appropriate listing in any body system. Also in final listing 104.06D, we change the language that previously directed that a child should be considered disabled until the later of 1 year of age or 12 months after surgery for a life-threatening congenital heart impairment. Instead, we specify that the child should be considered disabled until at least 1 year of age. This is because, if the condition is truly life threatening, the surgical treatment would generally be done within the first few months after birth and, at the age of 1 year, an assessment of the child's residual impairment would generally be possible. We further specify that the listing applies only when the impairment is expected to be disabling (because of residual impairment following surgery, the recovery time required, or both) until the attainment of at least 1 year of age. The listing will not apply to surgery for congenital heart impairments that routinely result in prompt recovery or less severe residual impairment.

104.09—Heart Transplant

We use the same language as in final listing 4.09.

104.13—Rheumatic Heart Disease

We change the heading by removing the reference to "[c]hronic rheumatic fever" because the impairment is related to the resulting heart disease, not the "fever." We also include prior listing 104.13A with the prior header text, with some reorganization of the material. We remove listings 104.13B and 104.13C because they are reference listings.

What Other Revisions Are We Making?

As we have already noted in our explanation of final section 4.00D1, cor pulmonale will be evaluated under the respiratory listings, as it is a heart condition resulting from a respiratory disorder. Thus, we also revise prior listing 3.09 by removing reference listing 3.09C, which referred to listing 4.02.

Throughout these final rules, we are also making nonsubstantive editorial changes to language we proposed in the NPRM for clarity, consistency, medical accuracy, and readability. For example:

• In the NPRM, we used "order" and "purchase" interchangeably in referring to consultative examinations or special testing we need to purchase to complete our evaluation of your case. To make it clear that we are paying for these examinations, we have changed "order" to "purchase" throughout these final listings.

• In final sections 4.00B3b and 104.00B3b, we added a reference to "duration" to the second sentence to clarify that we may need to purchase a consultative examination to help us establish severity and duration of your impairment.

We have also simplified the language of several of the provisions we proposed, corrected unintentional inconsistencies between part A and part B, and corrected other minor errors in the NPRM. As we have already explained, we also reorganized some of the paragraphs we proposed in the introductory text of both part A and part B to group them more logically. In some cases, this necessitated redesignation of subsequent paragraphs. Throughout, we also made minor editorial changes to simplify and clarify the language we proposed. We do not intend any of these revisions to change the meaning of the proposed rules.

Public Comments

In the NPRM we published in the **Federal Register** on September 16, 2004 (69 FR 55874), we provided the public with a 60-day comment period that ended on November 15, 2004.

In response to the notice, we received comments from six commenters. These commenters included a legal services organization, an advocacy organization for people with Marfan syndrome, State agencies that make disability determinations for us, an organization representing individuals who make disability determinations for us, and a private individual. Most of the commenters raised more than one issue. We carefully considered all of the comments.

A number of the comments were quite long and detailed, requiring us to condense, summarize, or paraphrase them. We believe we have accurately presented the views of the commenters, and we are responding to all of the significant issues within the scope of the proposed rulemaking raised by the commenters. Some comments simply agreed with specific proposed changes and do not require a response, and we did not summarize them here. We provide our reasons for adopting or not adopting the comments in our responses below.

Exercise Tolerance Tests (ETTs)

Comment: One commenter had several concerns about the ETT provisions in the proposed rules. The commenter believed that the proposed listings would require many more claimants to get SSA-purchased testing. The commenter believed that the proposed rules took a much more aggressive approach to testing than the prior rules and "actually established a protocol for testing claimants using stress tests and exercise tolerance tests." The commenter also noted the requirement for review by a State agency medical consultant to determine whether there was risk before we purchased an ETT. Finally, the commenter said that the proposed rules did not allow for a consulting physician to examine a claimant or to talk to either the claimant or the claimant's treating physician in determining whether there was risk. The commenter said that this was "a marked departure from previous policy."

Another commenter believed that proposed section 4.00C6d would have required the purchase of an ETT to evaluate aerobic capacity even when there was sufficient information in the record to adequately assess residual functional capacity.

Response: Except for a few minor technical changes, the testing requirements in section 4.00C of the proposed listings and these final rules are the same as the requirements in section 4.00C of the prior rules; we primarily reorganized and clarified those provisions. For example, the provisions about what we need to evaluate electrocardiogram (ECG) reports in proposed and final section 4.00C2 were in prior section 4.00C1.

Likewise, the final rules for MC review and treating physician contact are based on the prior rules, although we expanded them somewhat to provide even more protection for claimants. We took the rules in final (and proposed) section 4.00C7a, which describe how an MC will review the evidence to determine whether an ETT would pose a significant risk to you, from section 4.00C2 of the prior rules. As in the fourth sentence of prior section 4.00C2e(1), we continue to require in final section 4.00C7b that our adjudicators ask for a statement from the treating source for your cardiac impairment why an ETT was not done or should not be done when we believe that we need to purchase an ETT. In final section 4.00C7c, as in the NPRM, we include the provision from the last sentence of prior section 4.00C2c and the fifth sentence of prior section 4.00C2e(1) that it will be a "rare situation" in which an MC will override a treating source's opinion that an ETT should not be performed. We also include the provision from the last sentence of prior section 4.00C2c that requires the MC to provide a written rationale documenting the reasons for overriding the opinion in those rare circumstances. In addition, we added a new provision in final section 4.00C7e explaining that the physician who conducts the ETT (and therefore who examines the claimant) must be provided with the background medical evidence and is ultimately responsible for assessing risk before performing a test we purchase.

In response to the second commenter, it was not our intent to require the purchase of ETTs under the circumstances described in the comment letter, but we are clarifying the final rule in response to this comment. Our intent in proposed section 4.00C6d was to clarify the statement in section 4.00C2a of our prior rules that "[p]urchase of an exercise test may be appropriate when * * * there is insufficient evidence in the record to evaluate aerobic capacity, and the claim cannot otherwise be favorably decided." Like prior section 4.00C2a, final section 4.00C6 provides that we will purchase an ETT only when we need one to make a determination or decision. If we have sufficient evidence to evaluate your residual functional capacity, we will not purchase an ETT. We do not expect an increase in the number of purchased exercise tests.

Comment: One commenter agreed with our statement in proposed section 4.00D3 that digitalis would not prevent application of listing 4.02B3. However, the commenter said that digitalis raises the risk of performing an ETT and that the clinical findings of jugular venous distention, rales, S3 gallop, and peripheral edema in a claimant with chronic heart failure on digitalis should be adequate to assess these cases without the risk of an ETT.

Response: We clarified the rule in response to this comment. We believe that the commenter was referring to our statement in the NPRM that digitalis use "is not a factor" when considering ETT purchase in cases involving chronic heart failure. Although it is true that digitalis alone does not increase the risk of performing an ETT, it is certainly an indication that the individual is being treated for a heart condition and is one piece of information, along with the other factors presented in the commenter's remarks, that we would consider when we determine whether to purchase an ETT. As we have already

noted, and as we explain in final section 4.00C6, we do not require ETTs in any case in which there is already sufficient evidence to make a determination or decision.

In the final rules, we are clarifying what we originally intended; only that digitalis use *by itself* does not preclude the purchase of an ETT in cases involving CHF. We are also adding a cross-reference in section 4.00D3 to section 4.00C6 as a reminder that we do not need to purchase ETTs in all cases.

Other Cardiovascular Tests

Comment: A commenter was concerned that in proposed section 4.00C16 we seemed to require our adjudicators to obtain a copy of the plethysmographic tracings that support a report of a Doppler study in every case, including when we obtain the report from your treating source or another existing medical source. The commenter pointed out that these tracings are not always available and asked whether the proposed rule would require the purchase of new studies just so that we could get tracings.

Response: We clarified the final rule in response to this comment. To distinguish what we must have from what we would like to have in evidence we receive from treating sources and other existing medical sources, we indicate in final section 4.00C16 that we "should" have the tracings but that we "must" have the other information we include in the final rule. Although we prefer to get the tracings when they are available, we do not require them in reports from treating sources or other existing medical sources for the reasons given by the commenter and we would not always require retesting just to obtain the tracings. We do require the other information we note in the paragraph because we need it to properly evaluate the results of the Doppler study. We also require plethysmographic tracings when we purchase a Doppler study as part of a consultative examination.

Comment: One commenter objected to our exclusion of tilt-table testing for evaluating arrhythmias and syncope/near syncope.

Response: As noted in the summary of the changes above, we rethought our position on this and have decided to accept tilt-table testing for establishing arrhythmias as the cause for syncope/near syncope in appropriate circumstances. Final sections 4.00F3c and 104.00E3 require that the testing be done concurrently with an ECG and that the arrhythmias are coincident with the occurrence of syncope/near syncope, similar to the Holter requirements.

The Listing Criteria

Comment: We received extensive comments from an organization that provides support, advocacy, and education for and about people who have Marfan syndrome. The commenter noted that Marfan syndrome is rare and that, with improvements in diagnosis and treatment, people with Marfan syndrome are living longer. However, these individuals are experiencing more medical problems that affect other body systems in addition to the cardiovascular system. These other medical problems were not seen as frequently when people with Marfan syndrome did not live as long. The commenter noted that we did include Marfan syndrome under proposed listing 4.10. However, the commenter requested that we also add a separate listing for Marfan syndrome that would recognize the multiple body system effects of the syndrome, and suggested criteria for such a listing. The commenter also asked us to include Marfan syndrome under prior listing 4.07, Valvular heart disease. Finally, the commenter expressed concern about the difficulty that some individuals with Marfan syndrome have in obtaining disability benefits from us.

Response: We did not adopt the specific comments, but we added a section to the introductory text of part A and part B to address the commenter's concern. We did not add a new listing specifically for Marfan syndrome in these final rules because, as the commenter noted, Marfan syndrome is a genetic connective tissue disorder that affects multiple body systems; therefore, we do not believe it is appropriate to add a listing for this disorder in the cardiovascular listings. Also, we did not adopt the comment regarding prior listing 4.07, because we have removed it. We explained in the preamble to the NPRM (69 FR 55877) that we were removing all reference listings—listings that cross-refer to other listings—from the cardiovascular system.

However, in response to this comment we have added final sections 4.00H8 and 104.00F10. The new sections briefly describe Marfan syndrome and explain that we will evaluate your Marfan syndrome manifestations under the appropriate body system criteria.

Comment: One commenter provided several comments about the functional criteria in the proposed rules. The commenter said that the proposed listings did not mention the New York Heart Association (NYHA) standards for assessing functional loss in cardiovascular impairments. The commenter also said that, while the immune system and mental disorders listings put a great deal of emphasis on functional loss, the proposed cardiovascular listings made "relatively little mention of function."

The commenter also believed that when the proposed listings did mention functional loss, the standard of "a very serious limit on ability to initiate or sustain activities of daily living" appeared too high. Another commenter thought this standard was vague and hard to apply and preferred the prior terms, "normal activities" and "at rest."

A third commenter considered "the changes to the requirements for heart failure to be more consistent with NYHA" classifications.

Response: In the 1991 NPRM for the prior rules, we proposed to include NYHA functional criteria in the cardiovascular listings. (See 56 FR 31266, July 9, 1991.) We received several comments opposing this proposal, and because we agreed with the comments, we removed those references when we promulgated the prior rules in 1994. Among other concerns, commenters pointed out that the NYHA criteria are too vague for our purposes, that treating sources do not use the classifications, that the definitions of the NYHA classifications may be changed, and that the classifications are not useful when the level of an individual's functional limitations fluctuates over time. In responding to these comments, we said that we agreed with the commenters that there were a number of real problems in using the NYHA classifications in an adjudicatory context, and that the most straightforward approach would be simply to state exactly what we require in the listings. (See 59 FR 6468, at 6479–6480, February 10, 1994.) We believe that this explanation still holds true, especially since the final rules are not significantly different from the prior rules.

The phrase "very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living" and similar phrases in these final rules convey our standard for an "extreme" limitation; that is, a limitation of listing-level severity. We use this standard for functional loss in other listings; for example, sections 1.00B2b and 1.00B2c in the musculoskeletal body system and section 8.00C in the skin body system in part A of our listings. We also use it in other regulations; see § 416.926a(e)(3). The standard describes limitations in all of an individual's day-to-day activities, so it includes limitations from

cardiovascular symptoms both during normal activities and at rest.

Comment: One commenter said that the proposed listings referred to medical procedures that are not "fully embraced," that may become out-of-date in the near future, and that are not necessarily widely available, especially to people with low incomes. As an example, the commenter pointed to proposed new listing 4.04B for ischemic heart disease with three ischemic episodes requiring revascularization procedures within a 12-month period. The commenter said that it would be highly unlikely that a Medicaid patient could be scheduled for three procedures in such a short period of time.

Response: The medical procedures we include in the final rules are generally well-established and widely used. Therefore, we do not agree with the commenter that they are likely to become out-of-date in the near future. Also, we provide in these final rules that these rules will no longer be effective 5 years after the date on which they become effective, unless we extend them or revise and issue them again. This will allow us to update the medical procedures cited, if appropriate. Individuals with the very serious cardiovascular impairments described in these listings generally receive the kinds of tests and treatments described in these final rules because of urgent medical need.

Moreover, as we explained in the preamble to the proposed rules, final listing 4.04B is a new, *additional* listing criterion that "will permit us to decide some cases more quickly." (69 FR 55878) In other words, it does not add any additional requirement that must be met, but provides another way in which a person can be found disabled under the listing.

Comment: One commenter approved of our addition of recurrent bouts of decompensation to the evaluation of chronic heart failure in proposed section 4.00D4, but suggested that we change the definition of "periods of stabilization" from at least 5 days between episodes to 30 days between episodes to avoid variability during medication titrations. This commenter also suggested that we include a reference to left ventricular "fractional shortening" on echocardiograms, as the fractional shortening parameter is being used with increasing frequency to assess left ventricular function.

Response: We partially adopted the comment on the number of days between episodes of decompensation by extending the required length of the "periods of stabilization" from the proposed 5 days to 2 weeks. Our intent is to set the minimum number of days that would denote separate episodes. We believe that 30 days is too long and that 2 weeks is sufficient for this purpose.

We use fractional shortening in the childhood listing as evidence of chronic heart failure, but cannot add fractional shortening to the adult listing. Ejection fraction, which we use in the adult listing, represents the mean of the fractional shortening of the left ventricle; therefore, it is more accurate than fractional shortening measured at a single point. This is especially important if there is a segmental wall motion abnormality, which is often seen in claimants with coronary artery disease, a more common condition in adults than in children.

Comment: One commenter suggested that we change the description of brawny edema in proposed listing 4.11A from "approximately" two-thirds of the leg between the ankle and the knee to "at least" two-thirds or "above mid-tibia level."

Response: We adopted the comment. We proposed to say "approximately" because physicians generally will estimate the extent of the edema, rather than actually measure it. However, we agree that the commenter's suggestion of "at least" is clearer and better expresses our intent. In response to this comment, we also added an alternate descriptor of "the distal one-third of the lower extremity between the ankle and hip" to provide for those situations where the amount of brawny edema is given as a fraction of the entire lower extremity.

Comment: One commenter was reluctant to support the elimination of all reference listings, citing valvular heart disease as an example of an impairment unique enough to merit a listing. The commenter conceded that we discussed the listings we proposed to eliminate in the introductory text, but felt that it is easier for adjudicators to identify the need to evaluate these impairments if they are also included in the listings. It was also this commenter's opinion that this would offer assurance to the public and to their treating sources that these specific impairments have been considered.

Response: We did not adopt the comment. We do not agree that any prior reference listing would be especially helpful to adjudicators. All people who could qualify under any of the provisions of our prior reference listings will continue to qualify under other listings or the rules for medical equivalence or, in children, functional equivalence. Also, as we have already noted, we are removing reference listings from all the body systems as we revise them because reference listings are redundant; therefore, retaining one reference listing in this body system would be anomalous. Our adjudicators are aware that the listings do not include all possible disabling impairments, so they review allegations and the medical evidence obtained from treating or examining sources to identify all of the impairments we will evaluate.

However, in reviewing the NPRM in connection with this comment, we realized that we had inadvertently omitted a discussion of cardiomyopathies (prior listing 104.08) in the introductory text to part B. As noted above, we have corrected this oversight by adding final section 104.00F3. The text of the final rule is essentially identical to the corresponding rule in part A, final section 4.00H3, with minor changes to refer to children.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in sections 4.00B, 4.00C, 4.00D, 4.00E, 4.00F, 4.00G, 4.02A, 104.00B, 104.00C, 104.00E, and 104.06 of these final rules. The OMB Control Number for these collections is 0960–0642, expiring March 31, 2008.

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

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Blind,

Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: October 14, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as set forth below:

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

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

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

Appendix 1 to Subpart P of Part 404—Listings of Impairments [Amended]

■ 2. Item 5 of the introductory text before part A of appendix 1 is revised to read as follows:

* * * * *

5. Cardiovascular System (4.00 and 104.00): January 13, 2011.

* * * * *

■ 3. Listing 3.09 of part A of appendix 1 is amended by removing the semi-colon at the end of B, replacing it with a period, and removing the remainder of the listing.

■ 4. Section 4.00 of appendix 1 to subpart P of part 404 is revised to read as follows:

* * * * *

Part A

* * * * *

4.00 CARDIOVASCULAR SYSTEM

A. General

1. *What do we mean by a cardiovascular impairment?*

a. We mean any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired.

b. Cardiovascular impairment results from one or more of four consequences of heart disease:

(i) Chronic heart failure or ventricular dysfunction.

(ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.

(iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.

(iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

c. Disorders of the veins or arteries (for example, obstruction, rupture, or aneurysm) may cause impairments of the lower extremities (peripheral vascular disease), the central nervous system, the eyes, the kidneys, and other organs. We will evaluate peripheral vascular disease under 4.11 or 4.12 and impairments of another body system(s) under the listings for that body system(s).

2. *What do we consider in evaluating cardiovascular impairments?* The listings in this section describe cardiovascular impairments based on symptoms, signs, laboratory findings, response to a regimen of prescribed treatment, and functional limitations.

3. *What do the following terms or phrases mean in these listings?*

a. *Medical consultant* is an individual defined in §§ 404.1616(a) and 416.1016(a). This term does not include medical sources who provide consultative examinations for us. We use the abbreviation "MC" throughout this section to designate a medical consultant.

b. *Persistent* means that the longitudinal clinical record shows that, with few exceptions, the required finding(s) has been present, or is expected to be present, for a continuous period of at least 12 months, such that a pattern of continuing severity is established.

c. *Recurrent* means that the longitudinal clinical record shows that, within a consecutive 12-month period, the finding(s) occurs at least three times, with intervening periods of improvement of sufficient duration that it is clear that separate events are involved.

d. *Appropriate medically acceptable imaging* means that the technique used is the proper one to evaluate and diagnose the impairment and is commonly recognized as accurate for assessing the cited finding.

e. *A consecutive 12-month period* means a period of 12 consecutive months, all or part of which must occur within the period we are considering in connection with an application or continuing disability review.

f. *Uncontrolled* means the impairment does not adequately respond to standard prescribed medical treatment.

B. Documenting Cardiovascular Impairment

1. *What basic documentation do we need?* We need sufficiently detailed reports of history, physical examinations, laboratory studies, and any prescribed treatment and response to allow us to assess the severity and duration of your cardiovascular impairment. A longitudinal clinical record covering a period of not less than 3 months of observations and treatment is usually necessary, unless we can make a determination or decision based on the current evidence.

2. *Why is a longitudinal clinical record important?* We will usually need a longitudinal clinical record to assess the severity and expected duration of your impairment(s). If you have a listing-level impairment, you probably will have received medically prescribed treatment. Whenever there is evidence of such treatment, your longitudinal clinical record should include a description of the ongoing management and evaluation provided by your treating or other medical source. It should also include your response to this medical management, as well as information about the nature and severity of your impairment. The record will provide us with information on your functional status over an extended period of time and show whether your ability to function is improving, worsening, or unchanging.

3. *What if you have not received ongoing medical treatment?*

a. You may not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In this situation, we will base our evaluation on the current objective medical evidence and the other evidence we have. If you do not receive treatment, you cannot show an impairment that meets the criteria of most of these listings. However, we may find you disabled because you have another impairment(s) that in combination with your cardiovascular impairment medically equals the severity of a listed impairment or based on consideration of your residual functional capacity and age, education, and work experience.

b. Unless we can decide your claim favorably on the basis of the current evidence, a longitudinal record is still important. In rare instances where there is no or insufficient longitudinal evidence, we may purchase a consultative examination(s) to help us establish the severity and duration of your impairment.

4. *When will we wait before we ask for more evidence?*

a. We will wait when we have information showing that your impairment is not yet stable and the expected change in your impairment might affect our determination or decision. In these situations, we need to wait to properly evaluate the severity and duration of your impairment during a stable period. Examples of when we might wait are:

(i) If you have had a recent acute event; for example, a myocardial infarction (heart attack).

(ii) If you have recently had a corrective cardiac procedure; for example, coronary artery bypass grafting.

(iii) If you have started new drug therapy and your response to this treatment has not yet been established; for example, beta-blocker therapy for dilated congestive cardiomyopathy.

b. In these situations, we will obtain more evidence 3 months following the event before we evaluate your impairment. However, we will not wait if we have enough information to make a determination or decision based on all of the relevant evidence in your case.

5. *Will we purchase any studies?* In appropriate situations, we will purchase studies necessary to substantiate the diagnosis or to document the severity of your impairment, generally after we have evaluated the medical and other evidence we already have. We will not purchase studies involving exercise testing if there is significant risk involved or if there is another medical reason not to perform the test. We will follow sections 4.00C6, 4.00C7, and 4.00C8 when we decide whether to purchase exercise testing.

6. *What studies will we not purchase?* We will not purchase any studies involving cardiac catheterization, such as coronary angiography, arteriograms, or electrophysiological studies. However, if the results of catheterization are part of the existing evidence we have, we will consider them together with the other relevant evidence. See 4.00C15a.

C. Using Cardiovascular Test Results

1. *What is an ECG?*

a. *ECG* stands for *electrocardiograph* or *electrocardiogram*. An electrocardiograph is a machine that records electrical impulses of your heart on a strip of paper called an electrocardiogram or a *tracing*. To record the ECG, a technician positions a number of small contacts (or *leads*) on your arms, legs, and across your chest to connect them to the ECG machine. An ECG may be done while you are resting or exercising.

b. The ECG tracing may indicate that you have a heart abnormality. It may indicate that your heart muscle is not getting as much oxygen as it needs (ischemia), that your heart rhythm is abnormal (arrhythmia), or that there are other abnormalities of your heart, such as left ventricular enlargement.

2. *How do we evaluate ECG evidence?* We consider a number of factors when we evaluate ECG evidence:

a. An original or legible copy of the 12-lead ECG obtained at rest must be appropriately dated and labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large QRS amplitudes) must be identified on those leads.

(i) Detailed descriptions or computer-averaged signals without original or legible copies of the ECG as described in listing 4.00C2a are not acceptable.

(ii) The effects of drugs or electrolyte abnormalities must be considered as possible noncardiac causes of ECG abnormalities of ventricular repolarization; that is, those involving the ST segment and T wave. If available, the predrug (especially digitalis glycosides) ECG should be submitted.

b. ECGs obtained in conjunction with treadmill, bicycle, or arm exercise tests should meet the following specifications:

(i) ECG reports must include the original calibrated ECG tracings or a legible copy.

(ii) A 12-lead baseline ECG must be recorded in the upright position before exercise.

(iii) A 12-lead ECG should be recorded at the end of each minute of exercise.

(iv) If ECG documentation of the effects of hyperventilation is obtained, the exercise test should be deferred for at least 10 minutes because metabolic changes of hyperventilation may alter the physiologic and ECG-recorded response to exercise.

(v) Post-exercise ECGs should be recorded using a generally accepted protocol consistent with the prevailing state of medical knowledge and clinical practice.

(vi) All resting, exercise, and recovery ECG strips must have the standardization inscribed on the tracing. The ECG strips should be labeled to indicate the date, the times recorded and the relationship to the stage of the exercise protocol. The speed and grade (treadmill test) or work rate (bicycle or arm ergometric test) should be recorded. The highest level of exercise achieved, heart rate and blood pressure levels during testing, and the reason(s) for terminating the test (including limiting signs or symptoms) must be recorded.

3. *What are exercise tests and what are they used for?*

a. Exercise tests have you perform physical activity and record how your cardiovascular system responds. Exercise tests usually involve walking on a treadmill, but other forms of exercise, such as an exercise bicycle or an arm exercise machine, may be used. Exercise testing may be done for various reasons; such as to evaluate the severity of your coronary artery disease or peripheral vascular disease or to evaluate your progress after a cardiac procedure or an acute event, like a myocardial infarction (heart attack). Exercise testing is the most widely used testing for identifying the presence of myocardial ischemia and for estimating maximal aerobic capacity (usually expressed in METs—metabolic equivalents) if you have heart disease.

b. We include exercise tolerance test (ETT) criteria in 4.02B3 (chronic heart failure) and 4.04A (ischemic heart disease). To meet the ETT criteria in these listings, the ETT must be a sign- or symptom-limited test in which you exercise while connected to an ECG until you develop a sign or symptom that indicates that you have exercised as much as is considered safe for you.

c. In 4.12B, we also refer to exercise testing for peripheral vascular disease. In this test, you walk on a treadmill, usually for a specified period of time, and the individual who administers the test measures the effect of exercise on the flow of blood in your legs, usually by using ultrasound. The test is also called an exercise Doppler test. Even though this test is intended to evaluate peripheral vascular disease, it will be stopped for your safety if you develop abnormal signs or symptoms because of heart disease.

d. Each type of test is done in a certain way following specific criteria, called a *protocol*. For our program, we also specify certain aspects of how any exercise test we purchase is to be done. See 4.00C10 and 4.00C17.

4. *Do ETTs have limitations?* An ETT provides an estimate of aerobic capacity for walking on a grade, bicycling, or moving one's arms in an environmentally controlled setting. Therefore, ETT results do not correlate with the ability to perform other types of exertional activities, such as lifting and carrying heavy loads, and do not provide an estimate of the ability to perform activities required for work in all possible work environments or throughout a workday. Also, certain medications (such as beta blockers) and

conduction disorders (such as left or right bundle branch blocks) can cause false-negative or false-positive results. Therefore, we must consider the results of an ETT together with all the other relevant evidence in your case record.

5. *How does an ETT with measurement of maximal or peak oxygen uptake (VO_2) differ from other ETTs?* Occasionally, medical evidence will include the results of an ETT with VO_2. While ETTs without measurement of VO_2 provide only an estimate of aerobic capacity, measured maximal or peak oxygen uptake provides an accurate measurement of aerobic capacity, which is often expressed in METs (metabolic equivalents). The MET level may not be indicated in the report of attained maximal or peak VO_2 testing, but can be calculated as follows: 1 MET = 3.5 milliliters (ml) of oxygen uptake per kilogram (kg) of body weight per minute. For example, a 70 kg (154 lb.) individual who achieves a maximal or peak VO_2 of 1225 ml in 1 minute has attained 5 METs (1225 ml/70 kg/1 min = 17.5 ml/kg/min. 17.5/3.5 = 5 METs).

6. *When will we consider whether to purchase an exercise test?*

a. We will consider whether to purchase an exercise test when:

(i) There is a question whether your cardiovascular impairment meets or medically equals the severity of one of the listings, or there is no timely test in the evidence we have (see 4.00C9), and we cannot find you disabled on some other basis; or

(ii) We need to assess your residual functional capacity and there is insufficient evidence in the record to make a determination or decision.

b. We will not purchase an exercise test when we can make our determination or decision based on the evidence we already have.

7. *What must we do before purchasing an exercise test?*

a. Before we purchase an exercise test, an MC, preferably one with experience in the care of patients with cardiovascular disease, must review the pertinent history, physical examinations, and laboratory tests that we have to determine whether the test would present a significant risk to you or if there is some other medical reason not to purchase the test (see 4.00C8).

b. If you are under the care of a treating source (see §§ 404.1502 and 416.902) for a cardiovascular impairment, this source has not performed an exercise test, and there are no reported significant risks to testing, we will request a statement from that source explaining why it was not done or should not be done before we decide whether we will purchase the test.

c. The MC, in accordance with the regulations and other instructions on consultative examinations, will generally give great weight to the treating source's opinion about the risk of exercise testing to you and will generally not override it. In the rare situation in which the MC does override the treating source's opinion, the MC must prepare a written rationale documenting the reasons for overriding the opinion.

d. If you do not have a treating source or we cannot obtain a statement from your treating source, the MC is responsible for assessing the risk to exercise testing based on a review of the records we have before purchasing an exercise test for you.

e. We must also provide your records to the medical source who performs the exercise test for review prior to conducting the test if the source does not already have them. The medical source who performs the exercise test has the ultimate responsibility for deciding whether you would be at risk.

8. *When will we not purchase an exercise test or wait before we purchase an exercise test?*

a. We will not purchase an exercise test when an MC finds that you have one of the following significant risk factors:

(i) Unstable angina not previously stabilized by medical treatment.

(ii) Uncontrolled cardiac arrhythmias causing symptoms or hemodynamic compromise.

(iii) An implanted cardiac defibrillator.

(iv) Symptomatic severe aortic stenosis.

(v) Uncontrolled symptomatic heart failure.

(vi) Aortic dissection.

(vii) Severe pulmonary hypertension (pulmonary artery systolic pressure greater than 60 mm Hg).

(viii) Left main coronary stenosis of 50 percent or greater that has not been bypassed.

(ix) Moderate stenotic valvular disease with a systolic gradient across the aortic valve of 50 mm Hg or greater.

(x) Severe arterial hypertension (systolic greater than 200 mm Hg or diastolic greater than 110 mm Hg).

(xi) Hypertrophic cardiomyopathy with a systolic gradient of 50 mm Hg or greater.

b. We also will not purchase an exercise test when you are prevented from performing exercise testing due to another impairment affecting your ability to use your arms and legs.

c. We will not purchase an ETT to document the presence of a cardiac arrhythmia.

d. We will wait to purchase an exercise test until 3 months after you have had one of the following events. This will allow for maximal, attainable restoration of functional capacity.

(i) Acute myocardial infarction.

(ii) Surgical myocardial revascularization (bypass surgery).

(iii) Other open-heart surgical procedures.

(iv) Percutaneous transluminal coronary angioplasty with or without stenting.

e. If you are deconditioned after an extended period of bedrest or inactivity and could improve with activity, or if you are in acute heart failure and are expected to improve with treatment, we will wait an appropriate period of time for you to recuperate before we purchase an exercise test.

9. *What do we mean by a "timely" test?*

a. We consider exercise test results to be timely for 12 months after the date they are performed, provided there has been no change in your clinical status that may alter the severity of your cardiovascular impairment.

b. However, an exercise test that is older than 12 months, especially an abnormal one, can still provide information important to our adjudication. For example, a test that is more than 12 months old can provide evidence of ischemic heart disease or peripheral vascular disease, information on decreased aerobic capacity, or information about the duration or onset of your impairment. Such tests can be an important component of the longitudinal record.

c. When we evaluate a test that is more than 12 months old, we must consider the results in the context of all the relevant evidence, including why the test was performed and whether there has been an intervening event or improvement or worsening of your impairment.

d. We will purchase a new exercise test only if we cannot make a determination or decision based on the evidence we have.

10. *How must ETTs we purchase be performed?*

a. The ETT must be a sign- or symptom-limited test characterized by a progressive multistage regimen. It must be performed using a generally accepted protocol consistent with the prevailing state of medical knowledge and clinical practice. A description of the protocol that was followed must be provided, and the test must meet the requirements of 4.00C2b and this section. A radionuclide perfusion scan may be useful for detecting or confirming ischemia when resting ECG

abnormalities, medications, or other factors may decrease the accuracy of ECG interpretation of ischemia. (The perfusion imaging is done at the termination of exercise, which may be at a higher MET level than that at which ischemia first occurs. If the imaging confirms the presence of reversible ischemia, the exercise ECG may be useful for detecting the MET level at which ischemia initially appeared.) Exercise tests may also be performed using echocardiography to detect stress-induced ischemia and left ventricular dysfunction (see 4.00C12 and 4.00C13).

b. The exercise test must be paced to your capabilities and be performed following the generally accepted standards for adult exercise test laboratories. With a treadmill test, the speed, grade (incline), and duration of exercise must be recorded for each exercise test stage performed. Other exercise test protocols or techniques should use similar workloads. The exercise protocol may need to be modified in individual cases to allow for a lower initial workload with more slowly graded increments than the standard Bruce protocol.

c. Levels of exercise must be described in terms of workload and duration of each stage; for example, treadmill speed and grade, or bicycle ergometer work rate in kpm/min or watts.

d. The exercise laboratory's physical environment, staffing, and equipment must meet the generally accepted standards for adult exercise test laboratories.

11. *How do we evaluate ETT results?* We evaluate ETT results on the basis of the work level at which the test becomes abnormal, as documented by onset of signs or symptoms and any ECG or imaging abnormalities. The absence of an ischemic response on an ETT alone does not exclude the diagnosis of ischemic heart disease. We must consider the results of an ETT in the context of all of the other evidence in your case record.

12. *When are ETTs done with imaging?* When resting ECG abnormalities preclude interpretation of ETT tracings relative to ischemia, a radionuclide (for example, thallium-201 or technetium-99m) perfusion scan or echocardiography in conjunction with an ETT provides better results. You may have resting ECG abnormalities when you have a conduction defect—for example, Wolff-Parkinson-White syndrome, left bundle branch block, left ventricular hypertrophy—or when you are taking digitalis or other antiarrhythmic drugs, or when resting ST changes are present. Also, these techniques can provide a reliable estimate of ejection fraction.

13. *Will we purchase ETTs with imaging?* We may purchase an ETT with imaging in your case after an MC, preferably one with experience in the care of patients with cardiovascular disease, has reviewed your medical history and physical examination, any report(s) of appropriate medically acceptable imaging, ECGs, and other appropriate tests. We will consider purchasing an ETT with imaging when other information we have is not adequate for us to assess whether you have severe ventricular dysfunction or myocardial ischemia, there is no significant risk involved (see 4.00C8a), and we cannot make our determination or decision based on the evidence we already have.

14. *What are drug-induced stress tests?* These tests are designed primarily to provide evidence about myocardial ischemia or prior myocardial infarction, but do not require you to exercise. These tests are used when you cannot exercise or cannot exercise enough to achieve the desired cardiac stress. Drug-induced stress tests can also provide evidence about heart chamber dimensions and function; however, these tests do not provide information about your aerobic capacity and cannot be used to help us assess your ability to function. Some of these tests use agents, such as Persantine or adenosine, that dilate the coronary arteries and are used in combination with nuclear agents, such as thallium or technetium (for example, Cardiolyte or Myoview), and a myocardial scan. Other tests use agents, such as dobutamine, that stimulate the heart to contract more forcefully and faster to simulate exercise and are used in combination with a 2-dimensional echocardiogram. We may, when appropriate, purchase a drug-induced stress test to confirm the presence of myocardial ischemia after a review of the evidence in your file by an MC, preferably one with experience in the care of patients with cardiovascular disease.

15. *How do we evaluate cardiac catheterization evidence?*

a. We will not purchase cardiac catheterization; however, if you have had catheterization, we will make every reasonable effort to obtain the report and any ancillary studies. We will consider the quality and type of data provided and its relevance to the evaluation of your impairment. For adults, we generally see two types of catheterization reports: Coronary arteriography and left ventriculography.

b. For coronary arteriography, the report should provide information citing the method of assessing coronary arterial lumen diameter and the nature and location of obstructive lesions. Drug treatment at baseline and during the procedure should be reported. Some individuals with significant coronary atherosclerotic obstruction have collateral vessels that supply the myocardium distal to the arterial obstruction so that there is no evidence of myocardial damage or ischemia, even with exercise. When the results of quantitative computer measurements and analyses are included in your case record, we will consider them in interpreting the severity of stenotic lesions.

c. For left ventriculography, the report should describe the wall motion of the myocardium with regard to any areas of hypokinesis (abnormally decreased motion), akinesis (lack of motion), or dyskinesis (distortion of motion), and the overall contraction of the ventricle as measured by the ejection fraction. Measurement of chamber volumes and pressures may be useful. Quantitative computer analysis provides precise measurement of segmental left ventricular wall thickness and motion. There is often a poor correlation between left ventricular function at rest and functional capacity for physical activity.

16. *What details should exercise Doppler test reports contain?* The reports of exercise Doppler tests must describe the level of exercise; for example, the speed and grade of the treadmill settings, the duration of exercise, symptoms during exercise, and the reasons for stopping exercise if the expected level of exercise was not attained. They must also include the blood pressures at the ankle and other pertinent sites measured after exercise and the time required for the systolic blood pressure to return toward or to the pre-exercise level. The graphic tracings, if available, should also be included with the report. All tracings must be annotated with the standardization used by the testing facility.

17. *How must exercise Doppler tests we purchase be performed?* When we purchase an exercise Doppler test, you must exercise on a treadmill at 2 mph on a 12 percent grade for up to 5 minutes. The reports must include the information specified in 4.00C16. Because this is an exercise test, we must evaluate whether such testing would put you at significant risk, in accordance with the guidance found in 4.00C6, 4.00C7, and 4.00C8.

D. Evaluating Chronic Heart Failure

1. *What is chronic heart failure (CHF)?*

a. *CHF* is the inability of the heart to pump enough oxygenated blood to body tissues. This syndrome is characterized by symptoms and signs of pulmonary or systemic congestion (fluid retention) or limited cardiac output. Certain laboratory findings of cardiac functional and structural abnormality support the diagnosis of CHF. There are two main types of CHF:

(i) *Predominant systolic dysfunction* (the inability of the heart to contract normally and expel sufficient blood), which is characterized by a dilated, poorly contracting left ventricle and reduced ejection fraction (abbreviated EF, it represents the percentage of the blood in the ventricle actually pumped out with each contraction), and

(ii) *Predominant diastolic dysfunction* (the inability of the heart to relax and fill normally), which is characterized by a thickened ventricular muscle, poor ability of the left ventricle to distend, increased ventricular filling pressure, and a normal or increased EF.

b. CHF is considered in these listings as a single category whether due to atherosclerosis (narrowing of the arteries), cardiomyopathy, hypertension, or rheumatic, congenital, or other heart disease. However, if the CHF is the result of primary pulmonary hypertension secondary to disease of the lung (cor pulmonale), we will evaluate your impairment using 3.09, in the respiratory system listings.

2. *What evidence of CHF do we need?*

a. Cardiomegaly or ventricular dysfunction must be present and demonstrated by appropriate medically acceptable imaging, such as chest x-ray, echocardiography (M-Mode, 2-dimensional, and Doppler), radionuclide studies, or cardiac catheterization.

(i) Abnormal cardiac imaging showing increased left ventricular end diastolic diameter (LVEDD), decreased EF, increased left atrial chamber size, increased ventricular filling pressures measured at cardiac catheterization, or increased left ventricular wall or septum thickness, provides objective measures of both left ventricular function and structural abnormality in heart failure.

(ii) An LVEDD greater than 6.0 cm or an EF of 30 percent or less measured during a period of stability (that is, not during an episode of acute heart failure) may be associated clinically with systolic failure.

(iii) Left ventricular posterior wall thickness added to septal thickness totaling 2.5 cm or greater with left atrium enlarged to 4.5 cm or greater may be associated clinically with diastolic failure.

(iv) However, these measurements alone do not reflect your functional capacity, which we evaluate by considering all of the relevant evidence. In some situations, we may need to purchase an ETT to help us assess your functional capacity.

(v) Other findings on appropriate medically acceptable imaging may include increased pulmonary vascular markings, pleural effusion, and pulmonary edema. These findings need not be present on each report, since CHF may be controlled by prescribed treatment.

b. To establish that you have *chronic* heart failure, your medical history and physical examination should describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with the abnormal findings on appropriate medically acceptable imaging. When an acute episode of heart failure is triggered by a remediable factor, such as an arrhythmia, dietary sodium overload, or high altitude, cardiac function may be restored and a chronic impairment may not be present.

(i) Symptoms of congestion or of limited cardiac output include easy fatigue, weakness, shortness of breath (dyspnea), cough, or chest discomfort at rest or with activity. Individuals with CHF may also experience shortness of breath on lying flat (orthopnea) or episodes of shortness of breath that wake them from sleep (paroxysmal nocturnal dyspnea). They may also experience cardiac arrhythmias resulting in palpitations, lightheadedness, or fainting.

(ii) Signs of congestion may include hepatomegaly, ascites, increased jugular venous distention or pressure, rales, peripheral odema, or rapid weight gain. However, these signs need not be found on all examinations because fluid retention may be controlled by prescribed treatment.

3. *Is it safe for you to have an ETT, if you have CHF?* The presence of CHF is not necessarily a contraindication to an ETT, unless you are having an acute episode of heart failure. Measures of cardiac performance are valuable in helping us evaluate your ability to do work-related activities. Exercise testing has been safely used in individuals with CHF; therefore, we may purchase an ETT for evaluation under 4.02B3 if an MC, preferably one experienced in the care of patients with cardiovascular disease, determines that there is no significant risk to you. (See 4.00C6 for when we will consider the purchase of an ETT. See 4.00C7–4.00C8 for what we must do before we purchase an ETT and when we will not purchase one.) ST segment changes from digitalis use in the treatment of CHF do not preclude the purchase of an ETT.

4. *How do we evaluate CHF using 4.02?*

a. We must have objective evidence, as described in 4.00D2, that you have chronic heart failure.

b. To meet the required level of severity for this listing, your impairment must satisfy the requirements of one of the criteria in A and one of the criteria in B.

c. In 4.02B2, the phrase *periods of stabilization* means that, for at least 2 weeks between episodes of acute heart failure, there must be objective evidence of clearing of the pulmonary edema or pleural effusions and evidence that you returned to, or you were medically considered able to return to, your prior level of activity.

d. Listing 4.02B3c requires a decrease in systolic blood pressure below the baseline level (taken in the standing position immediately prior to exercise) or below any systolic pressure reading recorded during exercise. This is because, normally, systolic blood pressure and heart rate increase gradually with exercise. Decreases in systolic blood pressure below the baseline level that occur during exercise are often associated with ischemia-induced left ventricular dysfunction resulting in decreased cardiac output. However, a blunted response (that is, failure of the systolic blood pressure to rise 10 mm Hg or more), particularly in the first 3 minutes of exercise, may be drug-related and is not necessarily associated with left ventricular dysfunction. Also, some individuals with increased sympathetic responses because of deconditioning or apprehension may increase their systolic blood pressure and heart rate above their baseline level just before and early into exercise. This can be associated with a drop in systolic pressure in early exercise that is not due to left ventricular dysfunction. Therefore, an early decrease in systolic blood pressure must be interpreted within the total context of the test; that is, the presence or absence of symptoms such as lightheadedness, ischemic changes, or arrhythmias on the ECG.

E. Evaluating Ischemic Heart Disease

1. *What is ischemic heart disease (IHD)? IHD* results when one or more of your coronary arteries is narrowed or obstructed or, in rare situations, constricted due to vasospasm, interfering with the normal flow of blood to your heart muscle (ischemia). The obstruction may be the result of an embolus, a thrombus, or plaque. When

heart muscle tissue dies as a result of the reduced blood supply, it is called a myocardial infarction (heart attack).

2. *What causes chest discomfort of myocardial origin?*

a. Chest discomfort of myocardial ischemic origin, commonly known as angina pectoris, is usually caused by coronary artery disease (often abbreviated CAD). However, ischemic discomfort may be caused by a noncoronary artery impairment, such as aortic stenosis, hypertrophic cardiomyopathy, pulmonary hypertension, or anemia.

b. Instead of typical angina pectoris, some individuals with IHD experience atypical angina, anginal equivalent, variant angina, or silent ischemia, all of which we may evaluate using 4.04. We discuss the various manifestations of ischemia in 4.00E3–4.00E7.

3. *What are the characteristics of typical angina pectoris?* Discomfort of myocardial ischemic origin (angina pectoris) is discomfort that is precipitated by effort or emotion and promptly relieved by rest, sublingual nitroglycerin (that is, nitroglycerin tablets that are placed under the tongue), or other rapidly acting nitrates. Typically, the discomfort is located in the chest (usually substernal) and described as pressing, crushing, squeezing, burning, aching, or oppressive. Sharp, sticking, or cramping discomfort is less common. Discomfort occurring with activity or emotion should be described specifically as to timing and usual inciting factors (type and intensity), character, location, radiation, duration, and response to nitrate treatment or rest.

4. *What is atypical angina? Atypical angina* describes discomfort or pain from myocardial ischemia that is felt in places other than the chest. The common sites of cardiac pain are the inner aspect of the left arm, neck, jaw(s), upper abdomen, and back, but the discomfort or pain can be elsewhere. When pain of cardiac ischemic origin presents in an atypical site in the absence of chest discomfort, the source of the pain may be difficult to diagnose. To represent atypical angina, your discomfort or pain should have precipitating and relieving factors similar to those of typical chest discomfort, and we must have objective medical evidence of myocardial ischemia; for example, ECG or ETT evidence or appropriate medically acceptable imaging.

5. *What is anginal equivalent?* Often, individuals with IHD will complain of shortness of breath (dyspnea) on exertion without chest pain or discomfort. In a minority of such situations, the shortness of breath is due to myocardial ischemia; this is called *anginal equivalent.* To represent anginal equivalent, your shortness of breath should have precipitating and relieving factors similar to those of typical chest discomfort, and we must have objective medical evidence of myocardial ischemia; for example, ECG or ETT evidence or appropriate medically acceptable imaging. In these situations, it is essential to establish objective evidence of myocardial ischemia to ensure that you do not have effort dyspnea due to non-ischemic or non-cardiac causes.

6. *What is variant angina?*

a. *Variant angina* (Prinzmetal's angina, vasospastic angina) refers to the occurrence of anginal episodes at rest, especially at night, accompanied by transitory ST segment elevation (or, at times, ST depression) on an ECG. It is due to severe spasm of a coronary artery, causing ischemia of the heart wall, and is often accompanied by major ventricular arrhythmias, such as ventricular tachycardia. We will consider variant angina under 4.04 only if you have spasm of a coronary artery in relation to an obstructive lesion of the vessel. If you have an arrhythmia as a result of variant angina, we may consider your impairment under 4.05.

b. Variant angina may also occur in the absence of obstructive coronary disease. In this situation, an ETT will not demonstrate ischemia. The diagnosis will be established by showing the typical transitory ST segment changes during attacks of pain, and the absence of obstructive lesions shown by catheterization. Treatment in cases where there is no obstructive coronary disease is limited to medications that reduce coronary vasospasm, such as calcium channel blockers and nitrates. In such situations, we will consider the frequency of anginal episodes despite prescribed treatment when evaluating your residual functional capacity.

c. Vasospasm that is catheter-induced during coronary angiography is not variant angina.

7. *What is silent ischemia?*

a. Myocardial ischemia, and even myocardial infarction, can occur without perception of pain or any other symptoms; when this happens, we call it *silent ischemia.* Pain sensitivity may be altered by a variety of diseases, most notably diabetes mellitus and other neuropathic disorders. Individuals also vary in their threshold for pain.

b. Silent ischemia occurs most often in:

(i) Individuals with documented past myocardial infarction or established angina without prior infarction who do not have chest pain on ETT, but have a positive test with ischemic abnormality on ECG, perfusion scan, or other appropriate medically acceptable imaging.

(ii) Individuals with documented past myocardial infarction or angina who have ST segment changes on ambulatory monitoring (Holter monitoring) that are similar to those that occur during episodes of angina. ST depression shown on the ambulatory recording should not be interpreted as positive for ischemia unless similar depression is also seen during chest pain episodes annotated in the diary that the individual keeps while wearing the Holter monitor.

c. ST depression can result from a variety of factors, such as postural changes and variations in cardiac sympathetic tone. In addition, there are differences in how different Holter monitors record the electrical responses. Therefore, we do not consider the Holter monitor reliable for the diagnosis of silent ischemia except in the situation described in 4.00E7b(ii).

8. *What other sources of chest discomfort are there?* Chest discomfort of nonischemic origin may result from other cardiac impairments, such as pericarditis. Noncardiac impairments may also produce symptoms mimicking that of myocardial ischemia. These impairments include acute anxiety or panic attacks, gastrointestinal tract disorders, such as esophageal spasm, esophagitis, hiatal hernia, biliary tract disease, gastritis, peptic ulcer, and pancreatitis, and musculoskeletal syndromes, such as chest wall muscle spasm, chest wall syndrome (especially after coronary bypass surgery), costochondritis, and cervical or dorsal spine arthritis. Hyperventilation may also mimic ischemic discomfort. Thus, in the absence of documented myocardial ischemia, such disorders should be considered as possible causes of chest discomfort.

9. *How do we evaluate IHD using 4.04?*

a. We must have objective evidence, as described under 4.00C, that your symptoms are due to myocardial ischemia.

b. Listing-level changes on the ECG in 4.04A1 are the classically accepted changes of horizontal or downsloping ST depression occurring both during exercise and recovery. Although we recognize that ischemic changes may at times occur only during exercise or recovery, and may at times be upsloping with only junctional ST depression, such changes can be false positive; that is, occur in the absence of ischemia.

Diagnosis of ischemia in this situation requires radionuclide or echocardiogram confirmation. See 4.00C12 and 4.00C13.

c. Also in 4.04A1, we require that the depression of the ST segment last for at least 1 minute of recovery because ST depression that occurs during exercise but that rapidly normalizes in recovery is a common false-positive response.

d. In 4.04A2, we specify that the ST elevation must be in non-infarct leads during both exercise and recovery. This is because, in the absence of ECG signs of prior infarction, ST elevation during exercise denotes ischemia, usually severe, requiring immediate termination of exercise. However, if there is baseline ST elevation in association with a prior infarction or ventricular aneurysm, further ST elevation during exercise does not necessarily denote ischemia and could be a false-positive ECG response. Diagnosis of ischemia in this situation requires radionuclide or echocardiogram confirmation. See 4.00C12 and 4.00C13.

e. Listing 4.04A3 requires a decrease in systolic blood pressure below the baseline level (taken in the standing position immediately prior to exercise) or below any systolic pressure reading recorded during exercise. This is the same finding required in 4.02B3c. See 4.00D4d for full details.

f. In 4.04B, each of the three ischemic episodes must require revascularization or be not amenable to treatment. *Revascularization* means angioplasty (with or without stent placement) or bypass surgery. However, reocclusion that occurs after a revascularization procedure but during the same hospitalization and that requires a second procedure during the same hospitalization will not be counted as another ischemic episode. Not amenable means that the revascularization procedure could not be done because of another medical impairment or because the vessel was not suitable for revascularization.

g. We will use 4.04C only when you have symptoms due to myocardial ischemia as described in 4.00E3–4.00E7 while on a regimen of prescribed treatment, you are at risk for exercise testing (see 4.00C8), and we do not have a timely ETT or a timely normal drug-induced stress test for you. See 4.00C9 for what we mean by a timely test.

h. In 4.04C1 the term *nonbypassed* means that the blockage is in a vessel that is potentially bypassable; that is, large enough to be bypassed and considered to be a cause of your ischemia. These vessels are usually major arteries or one of a major artery's major branches. A vessel that has become obstructed again after angioplasty or stent placement and has remained obstructed or is not amenable to another revascularization is considered a nonbypassed vessel for purposes of this listing. When you have had revascularization, we will not use the pre-operative findings to assess the current severity of your coronary artery disease under 4.04C, although we will consider the severity and duration of your impairment prior to your surgery in making our determination or decision.

F. Evaluating Arrhythmias

1. *What is an arrhythmia?* An *arrhythmia* is a change in the regular beat of the heart. Your heart may seem to skip a beat or beat irregularly, very quickly (tachycardia), or very slowly (bradycardia).

2. *What are the different types of arrhythmias?*

a. There are many types of arrhythmias. Arrhythmias are identified by where they occur in the heart (atria or ventricles) and by what happens to the heart's rhythm when they occur.

b. Arrhythmias arising in the cardiac atria (upper chambers of the heart) are called atrial or supraventricular arrhythmias. Ventricular arrhythmias begin in the ventricles (lower chambers). In general, ventricular arrhythmias caused by heart disease are the most serious.

3. *How do we evaluate arrhythmias using 4.05?*

a. We will use 4.05 when you have arrhythmias that are not fully controlled by medication, an implanted pacemaker, or an implanted cardiac defibrillator and you have uncontrolled recurrent episodes of syncope or near syncope. If your arrhythmias are controlled, we will evaluate your underlying heart disease using the appropriate listing. For other considerations when we evaluate arrhythmias in the presence of an implanted cardiac defibrillator, see 4.00F4.

b. We consider *near syncope* to be a period of altered consciousness, since syncope is a loss of consciousness or a faint. It is not merely a feeling of light-headedness, momentary weakness, or dizziness.

c. For purposes of 4.05, there must be a documented association between the syncope or near syncope and the recurrent arrhythmia. The recurrent arrhythmia, not some other cardiac or non-cardiac disorder, must be established as the cause of the associated symptom. This documentation of the association between the symptoms and the arrhythmia may come from the usual diagnostic methods, including Holter monitoring (also called ambulatory electrocardiography) and tilt-table testing with a concurrent ECG. Although an arrhythmia may be a coincidental finding on an ETT, we will not purchase an ETT to document the presence of a cardiac arrhythmia.

4. *What will we consider when you have an implanted cardiac defibrillator and you do not have arrhythmias that meet the requirements of 4.05?*

a. Implanted cardiac defibrillators are used to prevent sudden cardiac death in individuals who have had, or are at high risk for, cardiac arrest from life-threatening ventricular arrhythmias. The largest group at risk for sudden cardiac death consists of individuals with cardiomyopathy (ischemic or non-ischemic) and reduced ventricular function. However, life-threatening ventricular arrhythmias can also occur in individuals with little or no ventricular dysfunction. The shock from the implanted cardiac defibrillator is a unique form of treatment; it rescues an individual from what may have been cardiac arrest. However, as a consequence of the shock(s), individuals may experience psychological distress, which we may evaluate under the mental disorders listings in 12.00ff.

b. Most implantable cardiac defibrillators have rhythm-correcting and pacemaker capabilities. In some individuals, these functions may result in the termination of ventricular arrhythmias without an otherwise painful shock. (The shock is like being kicked in the chest.) Implanted cardiac defibrillators may deliver inappropriate shocks, often repeatedly, in response to benign arrhythmias or electrical malfunction. Also, exposure to strong electrical or magnetic fields, such as from MRI (magnetic resonance imaging), can trigger or reprogram an implanted cardiac defibrillator, resulting in inappropriate shocks. We must consider the frequency of, and the reason(s) for, the shocks when evaluating the severity and duration of your impairment.

c. In general, the exercise limitations imposed on individuals with an implanted cardiac defibrillator are those dictated by the underlying heart impairment. However, the exercise limitations may be greater when the implanted cardiac defibrillator delivers an inappropriate shock in response to the increase in heart rate with exercise, or when there is exercise-induced ventricular arrhythmia.

G. Evaluating Peripheral Vascular Disease

1. *What is peripheral vascular disease (PVD)?* Generally, *PVD* is any impairment that affects either the arteries (peripheral arterial disease) or the veins (venous insufficiency) in the extremities, particularly the lower extremities. The usual effect is blockage of the flow of blood either from the heart (arterial) or back to the heart (venous). If you have peripheral arterial disease, you may have pain in your calf after walking a distance that goes away when you rest (intermittent claudication); at more advanced stages, you may have pain in your calf at rest or you may develop ulceration or gangrene. If you have venous insufficiency, you may have swelling, varicose veins, skin pigmentation changes, or skin ulceration.

2. *How do we assess limitations resulting from PVD?* We will assess your limitations based on your symptoms together with physical findings, Doppler studies, other appropriate non-invasive studies, or angiographic findings. However, if the PVD has resulted in amputation, we will evaluate any limitations related to the amputation under the musculoskeletal listings, 1.00ff.

3. *What is brawny edema? Brawny edema* (4.11A) is swelling that is usually dense and feels firm due to the presence of increased connective tissue; it is also associated with characteristic skin pigmentation changes. It is not the same thing as pitting edema. Brawny edema generally does not pit (indent on pressure), and the terms are not interchangeable. Pitting edema does not satisfy the requirements of 4.11A.

4. *What is lymphedema and how will we evaluate it?*

a. *Lymphedema* is edema of the extremities due to a disorder of the lymphatic circulation; at its worst, it is called elephantiasis. Primary lymphedema is caused by abnormal development of lymph vessels and may be present at birth (congenital lymphedema), but more often develops during the teens (lymphedema praecox). It may also appear later, usually after age 35 (lymphedema tarda). Secondary lymphedema is due to obstruction or destruction of normal lymphatic channels due to tumor, surgery, repeated infections, or parasitic infection such as filariasis. Lymphedema most commonly affects one extremity.

b. Lymphedema does not meet the requirements of 4.11, although it may medically equal the severity of that listing. We will evaluate lymphedema by considering whether the underlying cause meets or medically equals any listing or whether the lymphedema medically equals a cardiovascular listing, such as 4.11, or a musculoskeletal listing, such as 1.02A or 1.03. If no listing is met or medically equaled, we will evaluate any functional limitations imposed by your lymphedema when we assess your residual functional capacity.

5. *When will we purchase exercise Doppler studies for evaluating peripheral arterial disease (PAD)?* If we need additional evidence of your PAD, we will generally purchase exercise Doppler studies (see 4.00C16 and 4.00C17) when your resting ankle/brachial systolic blood pressure ratio is at least 0.50 but less than 0.80, and only rarely when it is 0.80 or above. We will not purchase exercise Doppler testing if you have a disease that results in abnormal arterial calcification or small vessel disease, but will use your resting toe systolic blood pressure or resting toe/brachial systolic blood pressure ratio. (See 4.00G7c and 4.00G8.) There are no current medical standards for evaluating exercise toe pressures. Because any exercise test stresses your entire cardiovascular system, we will purchase exercise Doppler studies only after an MC, preferably one with experience in the care of patients with cardiovascular disease, has determined that the test would not present a significant risk to you and that there is no other medical reason not to purchase the test (see 4.00C6, 4.00C7, and 4.00C8).

6. *Are there any other studies that are helpful in evaluating PAD?* Doppler studies done using a recording ultrasonic Doppler unit and strain-gauge plethysmography are other useful tools for evaluating PAD. A recording Doppler, which prints a tracing of the arterial pulse wave in the femoral, popliteal, dorsalis pedis, and posterior tibial arteries, is an excellent evaluation tool to compare wave forms in normal and compromised peripheral blood flow. Qualitative analysis of the pulse wave is very helpful in the overall assessment of the severity of the occlusive disease. Tracings are especially helpful in assessing severity if you have small vessel disease related to diabetes mellitus or other diseases with similar vascular changes, or diseases causing medial calcifications when ankle pressure is either normal or falsely high.

7. *How do we evaluate PAD under 4.12?*

a. The ankle blood pressure referred to in 4.12A and B is the higher of the pressures recorded from the posterior tibial and dorsalis pedis arteries in the affected leg. The higher pressure recorded from the two sites is the more significant measurement in assessing the extent of arterial insufficiency. Techniques for obtaining ankle systolic blood pressures include Doppler (See 4.00C16 and 4.00C17), plethysmographic studies, or other techniques. We will request any available tracings generated by these studies so that we can review them.

b. In 4.12A, the ankle/brachial systolic blood pressure ratio is the ratio of the systolic blood pressure at the ankle to the systolic blood pressure at the brachial artery; both taken at the same time while you are lying on your back. We do not require that the ankle and brachial pressures be taken on the same side of your body. This is because, as with the ankle pressure, we will use the higher brachial systolic pressure measured. Listing 4.12A is met when your resting ankle/brachial systolic blood pressure ratio is less than 0.50. If your resting ankle/brachial systolic blood pressure ratio is 0.50 or above, we will use 4.12B to evaluate the severity of your PAD, unless you also have a disease causing abnormal arterial calcification or small vessel disease, such as diabetes mellitus. See 4.00G7c and 4.00G8.

c. We will use resting toe systolic blood pressures or resting toe/brachial systolic blood pressure ratios (determined the same way as ankle/brachial ratios, see 4.00G7b) when you have intermittent claudication and a disease that results in abnormal arterial calcification (for example, Monckeberg's sclerosis or diabetes mellitus) or small vessel disease (for example, diabetes mellitus). These diseases may result in misleadingly high blood pressure readings at the ankle. However, high blood pressures due to vascular changes related to these diseases seldom occur at the toe level. While the criteria in 4.12C and 4.12D are intended primarily for individuals who have a disease causing abnormal arterial calcification or small vessel disease, we may also use them for evaluating anyone with PAD.

8. *How are toe pressures measured?* Toe pressures are measured routinely in most vascular laboratories through one of three methods: most frequently, photoplethysmography; less frequently, plethysmography using strain gauge cuffs; and Doppler ultrasound. Toe pressure can also be measured by using any blood pressure cuff that fits snugly around the big toe and is neither too tight nor too loose. A neonatal cuff or a cuff designed for use on fingers or toes can be used in the measurement of toe pressure.

9. *How do we use listing 4.12 if you have had a peripheral graft?* Peripheral grafting serves the same purpose as coronary grafting; that is, to bypass a narrow or obstructed arterial segment. If intermittent claudication recurs or persists after peripheral grafting, we may purchase Doppler studies to assess the flow of blood through the bypassed vessel and to establish the current severity of the peripheral arterial impairment. However, if you have had peripheral grafting done for your PAD, we will not use the findings from before the surgery to assess the current severity of your impairment, although we will consider the severity and duration of your impairment prior to your surgery in making our determination or decision.

H. Evaluating Other Cardiovascular Impairments

1. *How will we evaluate hypertension?* Because *hypertension* (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings. We will also consider any limitations imposed by your hypertension when we assess your residual functional capacity.

2. *How will we evaluate symptomatic congenital heart disease? Congenital heart disease* is any abnormality of the heart or the major blood vessels that is present at birth. Because of improved treatment methods, more children with congenital heart disease are living to adulthood. Although some types of congenital heart disease may be corrected by surgery, many individuals with treated congenital heart disease continue to have problems throughout their lives (symptomatic congenital heart disease). If you have congenital heart disease that results in chronic heart failure with evidence of ventricular dysfunction or in recurrent arrhythmias, we will evaluate your impairment under 4.02 or 4.05. Otherwise, we will evaluate your impairment under 4.06.

3. *What is cardiomyopathy and how will we evaluate it? Cardiomyopathy* is a disease of the heart muscle. The heart loses its ability to pump blood (heart failure), and in some instances, heart rhythm is disturbed, leading to irregular heartbeats (arrhythmias). Usually, the exact cause of the muscle damage is never found (idiopathic cardiomyopathy). There are various types of cardiomyopathy, which fall into two major categories: *Ischemic* and *nonischemic* cardiomyopathy. Ischemic cardiomyopathy typically refers to heart muscle damage that results from coronary artery disease, including heart attacks. Nonischemic cardiomyopathy includes several types: Dilated, hypertrophic, and restrictive. We will evaluate cardiomyopathy under 4.02, 4.04, 4.05, or 11.04, depending on its effects on you.

4. *How will we evaluate valvular heart disease?* We will evaluate valvular heart disease under the listing appropriate for its effect on you. Thus, we may use 4.02, 4.04, 4.05, 4.06, or an appropriate neurological listing in 11.00ff.

5. *What do we consider when we evaluate heart transplant recipients?*

a. After your heart transplant, we will consider you disabled for 1 year following the surgery because there is a greater likelihood of rejection of the organ and infection during the first year.

b. However, heart transplant patients generally meet our definition of disability before they undergo transplantation. We will determine the onset of your disability based on the facts in your case.

c. We will not assume that you became disabled when your name was placed on a transplant waiting list. This is because you may be placed on a waiting list soon after diagnosis of the cardiac disorder that may eventually require a transplant. Physicians recognize that candidates for transplantation often have to wait months or even years before a suitable donor heart is found, so they place their patients on the list as soon as permitted.

d. When we do a continuing disability review to determine whether you are still disabled, we will evaluate your residual impairment(s), as shown by symptoms, signs, and laboratory findings, including any side effects of medication. We will consider any remaining symptoms, signs, and laboratory findings indicative of cardiac dysfunction in deciding whether medical improvement (as defined in §§ 404.1594 and 416.994) has occurred.

6. *When does an aneurysm have "dissection not controlled by prescribed treatment," as required under 4.10?* An aneurysm (or bulge in the aorta or one of its major branches) is *dissecting* when the inner lining of the artery begins to separate from the arterial wall. We consider the dissection not controlled when you have persistence of chest pain due to progression of the dissection, an increase in the size of the aneurysm, or compression of one or more branches of the aorta supplying the heart, kidneys, brain, or other organs. An aneurysm with dissection can cause heart failure, renal (kidney) failure, or neurological complications. If you have an aneurysm that does not meet the requirements of 4.10 and you have one or more of these associated conditions, we will evaluate the condition(s) using the appropriate listing.

7. *What is hyperlipidemia and how will we evaluate it? Hyperlipidemia* is the general term for an elevation of any or all of the lipids (fats or cholesterol) in the blood; for example, hypertriglyceridemia, hypercholesterolemia, and hyperlipoproteinemia. These disorders of lipoprotein metabolism and transport can cause defects throughout the body. The effects most likely to interfere with function are those produced by atherosclerosis (narrowing of the arteries) and coronary artery disease. We will evaluate your lipoprotein disorder by considering its effects on you.

8. *What is Marfan syndrome and how will we evaluate it?*

a. Marfan syndrome is a genetic connective tissue disorder that affects multiple body systems, including the skeleton, eyes, heart, blood vessels, nervous system, skin, and lungs. There is no specific laboratory test to diagnose Marfan syndrome. The diagnosis is generally made by medical history, including family history, physical examination, including an evaluation of the ratio of arm/leg size to trunk size, a slit lamp eye examination, and a heart test(s), such as an echocardiogram. In some cases, a genetic analysis may be useful, but such analyses may not provide any additional helpful information.

b. The effects of Marfan syndrome can range from mild to severe. In most cases, the disorder progresses as you age. Most individuals with Marfan syndrome have abnormalities associated with the heart and blood vessels. Your heart's mitral valve may leak, causing a heart murmur. Small leaks may not cause symptoms, but larger ones may cause shortness of breath, fatigue, and palpitations. Another effect is that the wall of the aorta may be weakened and abnormally stretch (aortic dilation). This aortic dilation may tear, dissect, or rupture, causing serious heart problems or sometimes sudden death. We will evaluate the manifestations of your Marfan syndrome under the appropriate body system criteria, such as 4.10, or if necessary, consider the functional limitations imposed by your impairment.

I. Other Evaluation Issues

1. *What effect does obesity have on the cardiovascular system and how will we evaluate it?* Obesity is a medically determinable impairment that is often associated with disorders of the cardiovascular system. Disturbance of

this system can be a major cause of disability if you have obesity. Obesity may affect the cardiovascular system because of the increased workload the additional body mass places on the heart. Obesity may make it harder for the chest and lungs to expand. This can mean that the respiratory system must work harder to provide needed oxygen. This in turn would make the heart work harder to pump blood to carry oxygen to the body. Because the body would be working harder at rest, its ability to perform additional work would be less than would otherwise be expected. Thus, the combined effects of obesity with cardiovascular impairments can be greater than the effects of each of the impairments considered separately. We must consider any additional and cumulative effects of obesity when we determine whether you have a severe cardiovascular impairment or a listing-level cardiovascular impairment (or a combination of impairments that medically equals the severity of a listed impairment), and when we assess your residual functional capacity.

2. *How do we relate treatment to functional status?* In general, conclusions about the severity of a cardiovascular impairment cannot be made on the basis of type of treatment rendered or anticipated. The amount of function restored and the time required for improvement after treatment (medical, surgical, or a prescribed program of progressive physical activity) vary with the nature and extent of the disorder, the type of treatment, and other factors. Depending upon the timing of this treatment in relation to the alleged onset date of disability, we may need to defer evaluation of the impairment for a period of up to 3 months from the date treatment began to permit consideration of treatment effects, unless we can make a determination or decision using the evidence we have. See 4.00B4.

3. *How do we evaluate impairments that do not meet one of the cardiovascular listings?*

a. These listings are only examples of common cardiovascular impairments that we consider severe enough to prevent you from doing any gainful activity. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

b. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairments(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If you have a severe impairment(s) that does not meet or medically equal the criteria of a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. Therefore, we proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. If you are an adult, we use the rules in §§ 404.1594 or 416.994, as appropriate, when we decide whether you continue to be disabled.

4.01 Category of Impairments, Cardiovascular System

4.02 *Chronic heart failure* while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure); AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b(ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

4.04 *Ischemic heart disease*, with symptoms due to myocardial ischemia, as described in 4.00E3–4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign-or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:

1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least −0.10 millivolts (−1.0 mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than aVR, and depression of at least −0.10 millivolts lasting for at least 1 minute of recovery; or

2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or

3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload; or

4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

OR

B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

OR

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely

normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:

a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or

b. 70 percent or more narrowing of another nonbypassed coronary artery; or

c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or

d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or

e. 70 percent or more narrowing of a bypass graft vessel; and

2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

4.05 *Recurrent arrhythmias*, not related to reversible causes, such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled (see 4.00A3f), recurrent (see 4.00A3c) episodes of cardiac syncope or near syncope (see 4.00F3b), despite prescribed treatment (see 4.00B3 if there is no prescribed treatment), and documented by resting or ambulatory (Holter) electrocardiography, or by other appropriate medically acceptable testing, coincident with the occurrence of syncope or near syncope (see 4.00F3c).

4.06 *Symptomatic congenital heart disease* (cyanotic or acyanotic), documented by appropriate medically acceptable imaging (see 4.00A3d) or cardiac catheterization, with one of the following:

A. Cyanosis at rest, and:

1. Hematocrit of 55 percent or greater; or

2. Arterial O_2 saturation of less than 90 percent in room air, or resting arterial PO_2 of 60 Torr or less.

OR

B. Intermittent right-to-left shunting resulting in cyanosis on exertion (*e.g.*, Eisenmenger's physiology) and with arterial PO_2 of 60 Torr or less at a workload equivalent to 5 METs or less.

OR

C. Secondary pulmonary vascular obstructive disease with pulmonary arterial systolic pressure elevated to at least 70 percent of the systemic arterial systolic pressure.

4.09 *Heart transplant.* Consider under a disability for 1 year following surgery; thereafter, evaluate residual impairment under the appropriate listing.

4.10 *Aneurysm of aorta or major branches*, due to any cause (*e.g.*, atherosclerosis, cystic medial necrosis, Marfan syndrome, trauma), demonstrated by appropriate medically acceptable imaging, with dissection not controlled by prescribed treatment (see 4.00H6).

4.11 *Chronic venous insufficiency* of a lower extremity with incompetency or obstruction of the deep venous system and one of the following:

A. Extensive brawny edema (see 4.00G3) involving at least two-thirds of the leg between the ankle and knee or the distal one-third of the lower extremity between the ankle and hip.

OR

B. Superficial varicosities, stasis dermatitis, and either recurrent ulceration or persistent ulceration that has not healed following at least 3 months of prescribed treatment.

4.12 *Peripheral arterial disease*, as determined by appropriate medically acceptable imaging (see 4.00A3d, 4.00G2, 4.00G5, and 4.00G6), causing intermittent claudication (see 4.00G1) and one of the following:

A. Resting ankle/brachial systolic blood pressure ratio of less than 0.50.

OR

B. Decrease in systolic blood pressure at the ankle on exercise (see 4.00G7a and 4.00C16–4.00C17) of 50 percent or more of pre-exercise level and requiring 10 minutes or more to return to pre-exercise level.

OR

C. Resting toe systolic pressure of less than 30 mm Hg (see 4.00G7c and 4.00G8).

OR

D. Resting toe/brachial systolic blood pressure ratio of less than 0.40 (see 4.00G7c).

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■ 5. Section 104.00 of appendix 1 to subpart P of part 404 is revised to read as follows:

Part B

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104.00 CARDIOVASCULAR SYSTEM

A. General

1. *What do we mean by a cardiovascular impairment?*

a. We mean any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired.

b. Cardiovascular impairment results from one or more of four consequences of heart disease:

(i) Chronic heart failure or ventricular dysfunction.

(ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.

(iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.

(iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

c. Disorders of the veins or arteries (for example, obstruction, rupture, or aneurysm) may cause impairments of the lower extremities (peripheral vascular disease), the central nervous system, the eyes, the kidneys, and other organs. We will evaluate peripheral vascular disease under 4.11 or 4.12 in part A, and impairments of another body system(s) under the listings for that body system(s).

2. *What do we consider in evaluating cardiovascular impairments?* The listings in this section describe cardiovascular impairments based on symptoms, signs, laboratory findings, response to a regimen of prescribed treatment, and functional limitations.

3. *What do the following terms or phrases mean in these listings?*

a. *Medical consultant* is an individual defined in §§ 404.1616(a) and 416.1016(a). This term does not include medical sources who provide consultative examinations for us. We use the abbreviation "MC" throughout this section to designate a medical consultant.

b. *Persistent* means that the longitudinal clinical record shows that, with few exceptions, the required finding(s) has been present, or is expected to be present, for a continuous period of at least 12 months, such that a pattern of continuing severity is established.

c. *Recurrent* means that the longitudinal clinical record shows that, within a consecutive 12-month period, the finding(s) occurs at least three times, with intervening periods of improvement of sufficient duration that it is clear that separate events are involved.

d. *Appropriate medically acceptable imaging* means that the technique used is the proper one to evaluate and diagnose the impairment and is commonly recognized as accurate for assessing the cited finding.

e. *A consecutive 12-month period* means a period of 12 consecutive months, all or part of which must occur within the period we are considering in connection with an application or continuing disability review.

f. *Currently present* means that the finding is present at the time of adjudication.

g. *Uncontrolled* means the impairment does not respond adequately to standard prescribed medical treatment.

B. Documenting Cardiovascular Impairment

1. *What basic documentation do we need?* We need sufficiently detailed reports of history, physical examinations, laboratory studies, and any prescribed treatment and response to allow us to assess the severity and duration of your cardiovascular impairment. A longitudinal clinical record covering a period of not less than 3 months of observations and treatment is usually necessary, unless we can make a determination or decision based on the current evidence.

2. *Why is a longitudinal clinical record important?* We will usually need a longitudinal clinical record to assess the severity and expected duration of your impairment(s). If you have a listing-level impairment, you probably will have received medically prescribed treatment. Whenever there is evidence of such treatment, your longitudinal clinical record should include a description of the ongoing management and evaluation provided by your treating or other medical source. It should also include your response to this medical management, as well as information about the nature and severity of your impairment. The record will provide us with information on your functional status over an extended period of time and show whether your ability to function is improving, worsening, or unchanging.

3. *What if you have not received ongoing medical treatment?*

a. You may not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In this situation, we will base our evaluation on the current objective medical evidence and the other evidence we have. If you do not receive treatment, you cannot show an impairment that meets the criteria of these listings. However, we may find you disabled because you have another impairment(s) that in combination with your cardiovascular impairment medically equals the severity of a listed impairment or that functionally equals the listings.

b. Unless we can decide your claim favorably on the basis of the current evidence, a longitudinal record is still important. In rare instances where there is no or insufficient longitudinal evidence, we may purchase a consultative examination(s) to help us establish the severity and duration of your impairment.

4. *When will we wait before we ask for more evidence?*

a. We will wait when we have information showing that your impairment is not yet stable and the expected change in your impairment might affect our determination or decision. In these situations, we need to wait to properly evaluate the severity and duration of your impairment during a stable period. Examples of when we might wait are:

(i) If you have had a recent acute event; for example, acute rheumatic fever.

(ii) If you have recently had a corrective cardiac procedure; for example, open-heart surgery.

(iii) If you have started new drug therapy and your response to this treatment has not yet been established; for example, beta-blocker therapy for dilated congestive cardiomyopathy.

b. In these situations, we will obtain more evidence 3 months following the event before we evaluate your impairment. However, we will not wait if we have enough information to make a determination or decision based on all of the relevant evidence in your case.

5. *Will we purchase any studies?* In appropriate situations, we will purchase studies necessary to substantiate the diagnosis or to document the severity of your impairment, generally after we have evaluated the medical and other evidence we already have. We will not purchase studies involving exercise testing if there is significant risk involved or if there is another medical reason not to perform the test. We will follow sections 4.00C6, 4.00C7, 4.00C8, and 104.00B7 when we decide whether to purchase exercise testing. We will make a reasonable effort to obtain any additional studies from a qualified medical source in an office or center experienced in pediatric cardiac assessment. (See § 416.919g.)

6. *What studies will we not purchase?* We will not purchase any studies involving cardiac catheterization, such as coronary angiography, arteriograms, or electrophysiological studies. However, if the results of catheterization are part of the existing evidence we have, we will consider them together with the other relevant evidence. See 4.00C15a in part A.

7. *Will we use exercise tolerance tests (ETTs) for evaluating children with cardiovascular impairment?*

a. ETTs, though increasingly used, are still less frequently indicated in children than in adults, and can rarely be performed successfully by children under 6 years of age. An ETT may be of value in the assessment of some arrhythmias, in the assessment of the severity of chronic heart failure, and in the assessment of recovery of function following cardiac surgery or other treatment.

b. We will purchase an ETT in a childhood claim only if we cannot make a determination or decision based on the evidence we have and an MC, preferably one with experience in the care of children with cardiovascular impairments, has determined that an ETT is needed to evaluate your impairment. We will not purchase an ETT if you are less than 6 years of age. If we do purchase an ETT for a child age 12 or younger, it must be performed by a qualified medical source in a specialty center for pediatric cardiology or other facility qualified to perform exercise tests of children.

c. For full details on ETT requirements and usage, see 4.00C in part A.

C. Evaluating Chronic Heart Failure

1. *What is chronic heart failure (CHF)?*

a. *CHF* is the inability of the heart to pump enough oxygenated blood to body tissues. This syndrome is characterized by symptoms and signs of pulmonary or systemic congestion (fluid retention) or limited cardiac output. Certain laboratory findings of cardiac functional and structural abnormality support the diagnosis of CHF.

b. CHF is considered in these listings as a single category whether due to atherosclerosis (narrowing of the arteries), cardiomyopathy, hypertension, or rheumatic, congenital, or other heart disease. However, if the CHF is the result of primary pulmonary hypertension secondary to disease of the lung (cor pulmonale), we will evaluate your impairment using 3.09 in the respiratory system listings in part A.

2. *What evidence of CHF do we need?*

a. Cardiomegaly or ventricular dysfunction must be present and demonstrated by appropriate medically acceptable imaging, such as chest x-ray, echocardiography (M-Mode, 2-dimensional, and Doppler), radionuclide studies, or cardiac catheterization.

(i) Cardiomegaly is present when:

(*A*) Left ventricular diastolic dimension or systolic dimension is greater than 2 standard deviations above the mean for the child's body surface area;

(*B*) Left ventricular mass is greater than 2 standard deviations above the mean for the child's body surface area; or

(*C*) Chest x-ray (6 foot PA film) is indicative of cardiomegaly if the cardiothoracic ratio is over 60 percent at 1 year of age or less, or 55 percent or greater at more than 1 year of age.

(ii) Ventricular dysfunction is present when indices of left ventricular function, such as fractional shortening or ejection fraction (the percentage of the blood in the ventricle actually pumped out with each contraction), are greater than 2 standard deviations below the mean for the child's age. (Fractional shortening, also called shortening fraction, reflects the left ventricular systolic function in the absence of segmental wall motion abnormalities and has a linear correlation with ejection fraction. In children, fractional shortening is more commonly used than ejection fraction.)

(iii) However, these measurements alone do not reflect your functional capacity, which we evaluate by considering all of the relevant evidence.

(iv) Other findings on appropriate medically acceptable imaging may include increased pulmonary vascular markings, pleural effusion, and pulmonary edema. These findings need not be present on each report, since CHF may be controlled by prescribed treatment.

b. To establish that you have *chronic* heart failure, your medical history and physical examination should describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with the abnormal findings on appropriate medically acceptable imaging. When an acute episode of heart failure is triggered by a remediable factor, such as an arrhythmia, dietary sodium overload, or high altitude, cardiac function may be restored and a chronic impairment may not be present.

(i) Symptoms of congestion or of limited cardiac output include easy fatigue, weakness, shortness of breath (dyspnea), cough, or chest discomfort at rest or with activity. Children with CHF may also experience shortness of breath on lying flat (orthopnea) or episodes of shortness of breath that wake them from sleep (paroxysmal nocturnal dyspnea). They may also experience cardiac arrhythmias resulting in palpitations, lightheadedness, or fainting. Fatigue or exercise intolerance in an infant may be manifested by prolonged feeding time, often associated with excessive respiratory effort and sweating.

(ii) During infancy, other manifestations of chronic heart failure may include failure to gain weight or involuntary loss of weight and repeated lower respiratory tract infections.

(iii) Signs of congestion may include hepatomegaly, ascites, increased jugular venous distention or pressure, rales, peripheral edema, rapid shallow breathing (tachypnea), or rapid weight gain. However, these signs need not be found on all examinations because fluid retention may be controlled by prescribed treatment.

D. Evaluating Congenital Heart Disease

1. *What is congenital heart disease?* Congenital heart disease is any abnormality of the heart or the major blood vessels that is present at birth. Examples include:

a. *Abnormalities of cardiac septation,* including ventricular septal defect or atrioventricular canal;

b. *Abnormalities resulting in cyanotic heart disease,* including tetralogy of Fallot or transposition of the great arteries;

c. *Valvular defects or obstructions to ventricular outflow,* including pulmonary or aortic stenosis or coarctation of the aorta; and

d. *Major abnormalities of ventricular development,* including hypoplastic left heart syndrome or pulmonary tricuspid atresia with hypoplastic right ventricle.

2. *How will we evaluate symptomatic congenital heart disease?*

a. Because of improved treatment methods, more children with congenital heart disease are living longer. Although some types of congenital heart disease may be corrected by surgery, many children with treated congenital heart disease continue to have problems throughout their lives (symptomatic congenital heart disease). If you have congenital heart disease that results in chronic heart failure with evidence of ventricular dysfunction or in recurrent arrhythmias, we will evaluate your impairment under 104.02 or 104.05. Otherwise, we will evaluate your impairment under 104.06.

b. For 104.06A2, we will accept pulse oximetry measurements instead of arterial O_2, but the arterial O_2 values are preferred, if available.

c. For 104.06D, examples of impairments that in most instances will require life-saving surgery or a combination of surgery and other major interventional procedures (for example, multiple "balloon" catheter procedures) before age 1 include, but are not limited to, the following:

(i) Hypoplastic left heart syndrome,

(ii) Critical aortic stenosis with neonatal heart failure,

(iii) Critical coarctation of the aorta, with or without associated anomalies,

(iv) Complete atrioventricular canal defects,

(v) Transposition of the great arteries,

(vi) Tetralogy of Fallot,

(vii) Pulmonary atresia with intact ventricular septum,

(viii) Single ventricle,

(ix) Tricuspid atresia, and

(x) Multiple ventricular septal defects.

E. Evaluating Arrhythmias

1. *What is an arrhythmia?* An *arrhythmia* is a change in the regular beat of the heart. Your heart may seem to skip a beat or beat irregularly, very quickly (tachycardia), or very slowly (bradycardia).

2. *What are the different types of arrhythmias?*

a. There are many types of arrhythmias. Arrhythmias are identified by where they occur in the heart (atria or ventricles) and by what happens to the heart's rhythm when they occur.

b. Arrhythmias arising in the cardiac atria (upper chambers of the heart) are called atrial or supraventricular arrhythmias. Ventricular arrhythmias begin in the ventricles (lower chambers). In general, ventricular arrhythmias caused by heart disease are the most serious.

3. *How do we evaluate arrhythmias using 104.05?*

a. We will use 104.05 when you have arrhythmias that are not fully controlled by medication, an implanted pacemaker, or an implanted cardiac defibrillator and you have uncontrolled recurrent episodes of syncope or near syncope. If your arrhythmias are controlled, we will evaluate your underlying heart disease using the appropriate listing. For other considerations when we evaluate arrhythmias in the presence of an implanted cardiac defibrillator, see 104.00E4.

b. We consider *near syncope* to be a period of altered consciousness, since syncope is a loss of consciousness or a faint. It is not merely a feeling of light-headedness, momentary weakness, or dizziness.

c. For purposes of 104.05, there must be a documented association between the syncope or near syncope and the recurrent arrhythmia. The recurrent arrhythmia, not some other cardiac or non-cardiac disorder, must be established as the cause of the associated symptom. This documentation of the association between the symptoms and the

arrhythmia may come from the usual diagnostic methods, including Holter monitoring (also called ambulatory electrocardiography) and tilt-table testing with a concurrent ECG. Although an arrhythmia may be a coincidental finding on an ETT, we will not purchase an ETT to document the presence of a cardiac arrhythmia.

4. *What will we consider when you have an implanted cardiac defibrillator and you do not have arrhythmias that meet the requirements of 104.05?*

a. Implanted cardiac defibrillators are used to prevent sudden cardiac death in children who have had, or are at high risk for, cardiac arrest from life-threatening ventricular arrhythmias. The largest group of children at risk for sudden cardiac death consists of children with cardiomyopathy (ischemic or non-ischemic) and reduced ventricular function. However, life-threatening ventricular arrhythmias can also occur in children with little or no ventricular dysfunction. The shock from the implanted cardiac defibrillator is a unique form of treatment; it rescues a child from what may have been cardiac arrest. However, as a consequence of the shock(s), children may experience psychological distress, which we may evaluate under the mental disorders listings in 112.00ff.

b. Most implantable cardiac defibrillators have rhythm-correcting and pacemaker capabilities. In some children, these functions may result in the termination of ventricular arrhythmias without an otherwise painful shock. (The shock is like being kicked in the chest.) Implanted cardiac defibrillators may deliver inappropriate shocks, often repeatedly, in response to benign arrhythmias or electrical malfunction. Also, exposure to strong electrical or magnetic fields, such as from MRI (magnetic resonance imaging), can trigger or reprogram an implanted cardiac defibrillator, resulting in inappropriate shocks. We must consider the frequency of, and the reason(s) for, the shocks when evaluating the severity and duration of your impairment.

c. In general, the exercise limitations imposed on children with an implanted cardiac defibrillator are those dictated by the underlying heart impairment. However, the exercise limitations may be greater when the implanted cardiac defibrillator delivers an inappropriate shock in response to the increase in heart rate with exercise, or when there is exercise-induced ventricular arrhythmia.

F. Evaluating Other Cardiovascular Impairments

1. *What is ischemic heart disease (IHD) and how will we evaluate it in children? IHD* results when one or more of your coronary arteries is narrowed or obstructed or, in rare situations, constricted due to vasospasm, interfering with the normal flow of blood to your heart muscle (ischemia). The obstruction may be the result of an embolus, a thrombus, or plaque. When heart muscle tissue dies as a result of the reduced blood supply, it is called a myocardial infarction (heart attack). Ischemia is rare in children, but when it occurs, its effects on children are the same as on adults. If you have IHD, we will evaluate it under 4.00E and 4.04 in part A.

2. *How will we evaluate hypertension?* Because *hypertension* (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings. We will also consider any limitations imposed by your hypertension when we consider whether you have an impairment that functionally equals the listings.

3. *What is cardiomyopathy and how will we evaluate it? Cardiomyopathy* is a disease of the heart muscle. The heart loses its ability to pump blood (heart failure), and in some instances, heart rhythm is disturbed, leading to irregular heartbeats (arrhythmias). Usually, the exact cause of the muscle damage is never found (idiopathic cardiomyopathy). There are various types of cardiomyopathy, which fall into two major categories: *Ischemic* and *nonischemic* cardiomyopathy. Ischemic cardiomyopathy typically refers to heart muscle damage that results from coronary artery disease, including heart attacks. Nonischemic cardiomyopathy includes several types: Dilated, hypertrophic, and restrictive. We will evaluate cardiomyopathy under 4.04 in part A, 104.02, 104.05, or 111.06, depending on its effects on you.

4. *How will we evaluate valvular heart disease?* We will evaluate valvular heart disease under the listing appropriate for its effect on you. Thus, we may use 4.04 in part A, 104.02, 104.05, 104.06, or an appropriate neurological listing in 111.00ff.

5. *What do we consider when we evaluate heart transplant recipients?*

a. After your heart transplant, we will consider you disabled for 1 year following the surgery because there is a greater likelihood of rejection of the organ and infection during the first year.

b. However, heart transplant patients generally meet our definition of disability before they undergo transplantation. We will determine the onset of your disability based on the facts in your case.

c. We will not assume that you became disabled when your name was placed on a transplant waiting list. This is because you may be placed on a waiting list soon after diagnosis of the cardiac disorder that may eventually require a transplant. Physicians recognize that candidates for transplantation often have to wait months or even years before a suitable donor heart is found, so they place their patients on the list as soon as permitted.

d. When we do a continuing disability review to determine whether you are still disabled, we will evaluate your residual impairment(s), as shown by symptoms, signs, and laboratory findings, including any side effects of medication. We will consider any remaining symptoms, signs, and laboratory findings indicative of cardiac dysfunction in deciding whether medical improvement (as defined in § 416.994a) has occurred.

6. *How will we evaluate chronic rheumatic fever or rheumatic heart disease?* The diagnosis should be made in accordance with the current revised Jones criteria for guidance in the diagnosis of rheumatic fever. We will evaluate persistence of rheumatic fever activity under 104.13. If you have evidence of chronic heart failure or recurrent arrhythmias associated with rheumatic heart disease, we will use 104.02 or 104.05.

7. *What is hyperlipidemia and how will we evaluate it? Hyperlipidemia* is the general term for an elevation of any or all of the lipids (fats or cholesterol) in the blood; for example, hypertriglyceridemia, hypercholesterolemia, and hyperlipoproteinemia. These disorders of lipoprotein metabolism and transport can cause defects throughout the body. The effects most likely to interfere with function are those produced by atherosclerosis (narrowing of the arteries) and coronary artery disease. We will evaluate your lipoprotein disorder by considering its effects on you.

8. *How will we evaluate Kawasaki disease?* We will evaluate Kawasaki disease under the listing appropriate to its effects on you, which may include major coronary artery aneurysm or heart failure. A major coronary artery aneurysm may cause ischemia or arrhythmia, which we will evaluate under 4.04 in part A or 104.05. We will

evaluate chronic heart failure under 104.02.

9. *What is lymphedema and how will we evaluate it?*

a. *Lymphedema* is edema of the extremities due to a disorder of the lymphatic circulation; at its worst, it is called elephantiasis. Primary lymphedema is caused by abnormal development of lymph vessels and may be present at birth (congenital lymphedema), but more often develops during the teens (lymphedema praecox). Secondary lymphedema is due to obstruction or destruction of normal lymphatic channels due to tumor, surgery, repeated infections, or parasitic infection such as filariasis. Lymphedema most commonly affects one extremity.

b. Lymphedema does not meet the requirements of 4.11 in part A, although it may medically equal the severity of that listing. We will evaluate lymphedema by considering whether the underlying cause meets or medically equals any listing or whether the lymphedema medically equals a cardiovascular listing, such as 4.11, or a musculoskeletal listing, such as 101.02A or 101.03. If no listing is met or medically equaled, we will evaluate any functional limitations imposed by your lymphedema when we consider whether you have an impairment that functionally equals the listings.

10. *What is Marfan syndrome and how will we evaluate it?*

a. Marfan syndrome is a genetic connective tissue disorder that affects multiple body systems, including the skeleton, eyes, heart, blood vessels, nervous system, skin, and lungs. There is no specific laboratory test to diagnose Marfan syndrome. The diagnosis is generally made by medical history, including family history, physical examination, including an evaluation of the ratio of arm/leg size to trunk size, a slit lamp eye examination, and a heart test(s), such as an echocardiogram. In some cases, a genetic analysis may be useful, but such analyses may not provide any additional helpful information.

b. The effects of Marfan syndrome can range from mild to severe. In most cases, the disorder progresses as you age. Most individuals with Marfan syndrome have abnormalities associated with the heart and blood vessels. Your heart's mitral valve may leak, causing a heart murmur. Small leaks may not cause symptoms, but larger ones may cause shortness of breath, fatigue, and palpitations. Another effect is that the wall of the aorta may be weakened and stretch (aortic dilation). This aortic dilation may tear, dissect, or rupture, causing serious heart problems or sometimes sudden death. We will evaluate the manifestations of your Marfan syndrome under the appropriate body system criteria, such as 4.10 in part A, or if necessary consider the functional limitations imposed by your impairment.

G. Other Evaluation Issues

1. *What effect does obesity have on the cardiovascular system and how will we evaluate it?* Obesity is a medically determinable impairment that is often associated with disorders of the cardiovascular system. Disturbance of this system can be a major cause of disability in children with obesity. Obesity may affect the cardiovascular system because of the increased workload the additional body mass places on the heart. Obesity may make it harder for the chest and lungs to expand. This can mean that the respiratory system must work harder to provide needed oxygen. This in turn would make the heart work harder to pump blood to carry oxygen to the body. Because the body would be working harder at rest, its ability to perform additional work would be less than would otherwise be expected. Thus, the combined effects of obesity with cardiovascular impairments can be greater than the effects of each of the impairments considered separately. We must consider any additional and cumulative effects of obesity when we determine whether you have a severe cardiovascular impairment or a listing-level cardiovascular impairment (or a combination of impairments that medically equals a listing), and when we determine whether your impairment(s) functionally equals the listings.

2. *How do we relate treatment to functional status?* In general, conclusions about the severity of a cardiovascular impairment cannot be made on the basis of type of treatment rendered or anticipated. The amount of function restored and the time required for improvement after treatment (medical, surgical, or a prescribed program of progressive physical activity) vary with the nature and extent of the disorder, the type of treatment, and other factors. Depending upon the timing of this treatment in relation to the alleged onset date of disability, we may need to defer evaluation of the impairment for a period of up to 3 months from the date treatment began to permit consideration of treatment effects, unless we can make a determination or decision using the evidence we have. See 104.00B4.

3. *How do we evaluate impairments that do not meet one of the cardiovascular listings?*

a. These listings are only examples of common cardiovascular disorders that we consider severe enough to result in marked and severe functional limitations. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

b. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See § 416.926.) If you have a severe impairment(s) that does not meet or medically equal the criteria of a listing, we will consider whether it functionally equals the listings. (See § 416.926a.) When we decide whether you continue to be disabled, we use the rules in § 416.994a.

104.01 Category of Impairments, Cardiovascular System

104.02. *Chronic heart failure* while on a regimen of prescribed treatment, with symptoms and signs described in 104.00C2, and with one of the following:

A. Persistent tachycardia at rest (see Table I);

OR

B. Persistent tachypnea at rest (see Table II) or markedly decreased exercise tolerance (see 104.00C2b);

OR

C. Growth disturbance with:

1. An involuntary weight loss or failure to gain weight at an appropriate rate for age, resulting in a fall of 15 percentiles from an established growth curve (on current NCHS/CDC growth chart) which is currently present (see 104.00A3f) and has persisted for 2 months or longer; or

2. An involuntary weight loss or failure to gain weight at an appropriate rate for age, resulting in a fall to below the third percentile from an established growth curve (on current NCHS/CDC growth chart) which is currently present (see 104.00A3f) and has persisted for 2 months or longer.

TABLE I.—TACHYCARDIA AT REST

Age	Apical heart rate (beats per minute)
Under 1 yr	150
1 through 3 yrs	130
4 through 9 yrs	120
10 through 15 yrs	110
Over 15 yrs	100

TABLE II.—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yrs	35
6 through 9 yrs	30
Over 9 yrs	25

104.05 *Recurrent arrhythmias,* not related to reversible causes such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled (see 104.00A3g), recurrent (see 104.00A3c) episodes of cardiac syncope or near syncope (see 104.00E3b), despite prescribed treatment (see 104.00B3 if there is no prescribed treatment), and documented by resting or ambulatory (Holter) electrocardiography, or by other appropriate medically acceptable testing, coincident with the occurrence of syncope or near syncope (see 104.00E3c).

104.06 *Congenital heart disease,* documented by appropriate medically acceptable imaging (see 104.00A3d) or cardiac catheterization, with one of the following:

A. Cyanotic heart disease, with persistent, chronic hypoxemia as manifested by:

1. Hematocrit of 55 percent or greater on two evaluations 3 months or more apart within a consecutive 12-month period (see 104.00A3e); or

2. Arterial O_2 saturation of less than 90 percent in room air, or resting arterial PO_2 of 60 Torr or less; or

3. Hypercyanotic spells, syncope, characteristic squatting, or other incapacitating symptoms directly related to documented cyanotic heart disease; or

4. Exercise intolerance with increased hypoxemia on exertion.

OR

B. Secondary pulmonary vascular obstructive disease with pulmonary arterial systolic pressure elevated to at least 70 percent of the systemic arterial systolic pressure.

OR

C. Symptomatic acyanotic heart disease, with ventricular dysfunction interfering very seriously with the ability to independently initiate, sustain, or complete activities.

OR

D. For infants under 12 months of age at the time of filing, with life-threatening congenital heart impairment that will require or already has required surgical treatment in the first year of life, and the impairment is expected to be disabling (because of residual impairment following surgery, or the recovery time required, or both) until the attainment of at least 1 year of age, consider the infant to be under disability until the attainment of at least age 1; thereafter, evaluate impairment severity with reference to the appropriate listing.

104.09 *Heart transplant.* Consider under a disability for 1 year following surgery; thereafter, evaluate residual impairment under the appropriate listing.

104.13 *Rheumatic heart disease,* with persistence of rheumatic fever activity manifested by significant murmurs(s), cardiac enlargement or ventricular dysfunction (see 104.00C2a), and other associated abnormal laboratory findings; for example, an elevated sedimentation rate or ECG findings, for 6 months or more in a consecutive 12-month period (see 104.00A3e). Consider under a disability for 18 months from the established onset of impairment, then evaluate any residual impairment(s).

* * * * *

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January 13, 2006

Part III

Department of Veterans Affairs

48 CFR Chapter 8
VA Acquisition Regulation: Plain Language Rewrite; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Chapter 8

RIN 2900–AK78

VA Acquisition Regulation: Plain Language Rewrite

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to revise the Department of Veterans Affairs (VA) Acquisition Regulation (VAAR). We have rewritten much of the VAAR to conform to plain language principles. We are changing many delegations of authority for the purpose of becoming more efficient. We are removing non-regulatory material. We are making changes in format, arrangement, and numbering to make the VAAR parallel to the Federal Acquisition Regulation (FAR) as required by the FAR. We are removing provisions that simply restate FAR provisions that are already applicable. This document also proposes to set forth or revise procedures for providing notice and hearing to resolve issues regarding possible violations of the Gratuities clause, establishing qualified products lists, suspending or debarring a contractor, for expediting payments to small businesses, and for reducing or suspending payments upon a finding of contract fraud. We propose to expand the coverage of the VAAR clause on Organizational Conflicts of Interest to cover a broader range of services that may be subject to organizational conflicts of interest. We propose to clarify the scope of certain regulations and to allow use of additional VAAR clauses in commercial item solicitations and contracts, to remove requirements for setting aside construction and architect-engineer solicitations for small businesses that are in conflict with current statute, to remove a requirement to conduct an audit of section 8(a) price proposals that is contrary to current FAR requirements, and to remove a VAAR provision that requested data from offerors on veteran-owned small businesses that has been replaced by a FAR provision. The rule would provide guidance to contracting officers on the types of data that should be requested from a contractor when evaluating the contractor's financial condition. The rule would require the use of the clause on Assignment of Claims in purchase orders, would provide guidance to contracting officers on the criteria for revising the payment due dates for invoices, and would require the use of Alternate I to the clause on Disputes.

DATES: Comments on the proposed rule should be submitted on or before March 14, 2006 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VARegulations@va.gov;* or, through *http://www.regulations.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK78." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT:

VAAR part	Name	Telephone No. and e-mail address
808, 813, 852	Cathy Dailey	(202) 273–8774; *cathy.dailey@mail.va.gov.*
803 through 806, 809, 811, 817, 819, 822, 825, 828, 829, 831 through 833, 836, 837, 842, 846, 852, and 873.	Don Kaliher	(202) 273–8819; *donald.kaliher@mail.va.gov.*
801, 802, 807, 812, 814 through 816, 824, 841, 847, 849, 852, 853, 870, and 871.	Barbara Latvanas	(202) 273–7808; *barbara.latvanas@mail.va.gov.*

The mailing address for the contact persons is as follows: Acquisition Policy Division (049A5A), Office of Acquisition and Material Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, 20420.

SUPPLEMENTARY INFORMATION: When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the Federal Acquisition Regulation (FAR), set forth at 48 Code of Federal Regulations (CFR) chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. These authorities are designed to ensure that Government procurements are handled fairly and consistently, that the Government receives the best value for its money, and that all Government contractors operate under a known set of rules.

The Department of Veterans Affairs (VA) regulations that implement and supplement the FAR are named the VA Acquisition Regulation (VAAR) and are set forth at 48 CFR chapter 8, parts 801 through 873. The wide variety of activities that VA carries out makes it necessary for VA to implement and supplement the FAR. The VAAR covers VA special acquisition needs. We are proposing a number of changes to the VAAR. We have rewritten much of the VAAR to conform to plain language principles and plain language changes have been made to most parts of the VAAR. We propose to change many delegations of authority for the purpose of becoming more efficient. We are removing non-regulatory material. We propose to make changes in format, arrangement, and numbering to make the VAAR parallel to the Federal Acquisition Regulation (FAR) as required by subpart 1.3 of the FAR. We propose to remove provisions that simply restate FAR provisions that are already applicable. We are also proposing to make other changes discussed below.

Part 801, Department of Veterans Affairs Acquisition Regulations System

We propose to amend the "Authority" cites at the beginning of each Department of Veterans Affairs Acquisition Regulation (VAAR) part to correspond to current authority.

We propose to amend the VAAR to use acronyms, such as "VAAR," in part 801 and throughout the document for many of the common terms used. The new acronyms are referenced in part 802 or, if used only in one part or subpart of the VAAR, in that part or subpart.

We proposed to add new VAAR sections 801.105, Issuance, and 801.105–2, Arrangement of regulations, to explain how the VAAR is structured. The information follows the structure established for the Federal Acquisition Regulation (FAR) at 1.105 and 1.105–2.

The VAAR is intended to supplement the FAR and must follow a similar structural arrangement.

Throughout the document, sections of the VAAR have been renumbered and/or renamed to correspond to the FAR with no significant changes to the material contained therein. For instance, section 801.301–70, Paperwork Reduction Act requirements, has been renumbered and renamed as 801.106, OMB approval under the Paperwork Reduction Act, to correspond to the FAR.

We proposed to add designations for the Department's Chief Acquisition Officer, Senior Procurement Executive (SPE), and Procurement Executive (which is being renamed as the Deputy Senior Procurement Executive (DSPE)), at 802.100, Definitions, to new section 801.304, Agency control and compliance procedures, to delineate responsibilities for compliance with FAR requirements.

We propose to amend VAAR section 801.670–5 by removing previously delegated authority for all officials except the Inspector General to enter into or issue Letters of Agreement. As a result of this proposed change, future acquisitions of the types of services previously acquired under this section (*e.g.*, advisory and assistance services, peer review of research, acquisition of instructor services and training) will be acquired using normal acquisition methods (*e.g.*, purchase orders, micro-purchases using the purchase card). The Office of Inspector General may continue to issue contracts using a letter format due to the sensitive nature of the acquisitions of that office. We believe this proposed amendment will simplify the acquisition process and consolidate acquisition functions within VA.

Subpart 803.2, Contractor Gratuities to Government Personnel

We propose to add VAAR section 803.204 to specify the notification and hearing procedures we would follow before taking an action to terminate a contractor's right to proceed and/or initiate debarment or suspension measures, based on violation of the Gratuities clause. The proposed procedures are modeled after the proposed VAAR provisions at 809.406–3, which set out procedures for debarment. We would make these changes to comply with FAR 3.204.

Subpart 803.7, Voiding and Rescinding Contracts

We propose to add VAAR section 803.705 to specify the notification and hearing procedures we would follow before taking an action to void or rescind a contract based on final conviction for bribery or other offenses, as specified in FAR 3.700. The proposed procedures are modeled after the proposed VAAR provisions at 809.406–3, which set out procedures for debarment. We propose to make these changes to comply with FAR 3.705.

Sections 806.401 and 814.103–1

We propose to remove provisions currently in sections 806.401 and 814.103–1 requiring VA contracting officers to use sealed bidding procedures for any solicitation over the small purchase limitation and for any acquisition expected to exceed $1,000 for repairs of property under 38 United States Code (U.S.C.) Chapter 37. The FAR requires the use of sealed bidding if the acquisition is subject to FAR Part 6 and: (1) Time permits the solicitation, submission, and evaluation of sealed bids; (2) the award will be made on the basis of price and other price-related factors; (3) it is not necessary to conduct discussions with the responding offerors about their bids; and (4) there is a reasonable expectation of receiving more than one sealed bid. We see no reason for a special VAAR rule on these matters. By proposing to remove these VAAR provisions, VA contracting officers would be governed by the FAR. We believe the FAR provisions provide sufficient guidance on when to use sealed bidding procedures.

Subpart 807.3, Contractor Versus Government Performance, and 852.207–70, Report of Employment Under Commercial Activities

We propose to amend Subpart 807.3 to remove the term "employee(s)" to add in its place "personnel" to generally correspond with how the term is used in FAR Subpart 7.3 and in Office of Management and Budget Circular A–76.

Part 809, Contractor Qualifications

We propose to add new section 809.204, Responsibilities for establishment of a qualification requirement, to provide guidance to contracting officers on establishing VA qualified product lists (QPL). Contracting officers may develop a QPL either for local use, for use in VA's Veterans Integrated Service Networks (VISN), or for some other geographical or administrative area. This is consistent with the FAR at Subpart 9.2.

Under current VAAR 809.206(b)(2), a contractor must guarantee that he or she will deliver a product to VA if we agree to accept and test the product for listing on a QPL. We propose to remove this requirement because a guarantee in these circumstances is of no consequence since the terms of a contract for a product are negotiated after the listing of the product on a QPL. A contractor will sell its product to VA if the parties can agree on price and other terms and conditions.

Under current VAAR 809.206(b)(2), when we are establishing a VA QPL, VA gives "known suppliers" of an item the chance to submit a sample item. However, under FAR 8.404, VA may issue a delivery order against a Federal Supply Schedule (FSS) contract without seeking further competition from firms who do not hold FSS contracts and may seek price reductions from FSS contractors. We propose to revise the text currently in 809.206(b)(2) to state that VA may limit "known suppliers" to those contractors whose products are already covered under an FSS contract and to redesignate the provision as 809.204(c)(2). This proposed change would preclude requiring VA to duplicate a full and open competition that has already been conducted to establish the FSS schedule. Our proposed action is consistent with FAR 8.404.

Subpart 809.4, Debarment, Suspension, and Ineligibility

Subpart 809.4 supplements provisions of the FAR concerning the debarment or suspension of contractors. We propose to amend the procedures for debarring or suspending contractors. The proposed procedures include the following:

Under the proposed procedures, when the Debarment and Suspension (D&S) Committee finds evidence of a cause for debarment or suspension, it would conduct an investigation on whether or not to prepare a Notice of Proposal to Debar or Notice of Suspension and make a recommendation to the Deputy Senior Procurement Executive (DSPE).

If the DSPE finds a basis for debarment or suspension, the D&S Committee would send the contractor the Notice of Proposal to Debar or Notice of Suspension. Pursuant to the FAR, a contractor given a Notice of Proposal to Debar or Notice of Suspension is excluded from participating in Federal procurement and non-procurement programs.

The contractor proposed for debarment or suspended may submit information in person or in writing at an informal proceeding or otherwise. If the contractor's objections to the proposed debarment or suspension are based on a genuine dispute over facts material to the action, the dispute would be resolved in a separate preceding before a member of the VA Board of Contract Appeals (an informal trial type hearing

under the procedures in proposed section 809.470).

If there is no such dispute or if all disputes have been resolved, the debarring or suspending official will make a decision based on all available information.

These proposed procedures are designed to ensure that the contractor is provided with an efficient and fair process before a decision is made on whether or not to take a debarment action or to continue with a suspension action.

Subpart 809.5, Organizational and Consultant Conflicts of Interest

The VAAR currently requires that the clause at 852.209–70, Organizational Conflicts of Interest, be inserted in solicitations for consulting services. We propose to require that this clause also be used in solicitations for management support services, other professional services, contractor performance of, or assistance in, conducting technical evaluations; or system engineering and technical direction work. These are the types of services that may be subject to potential organizational and consultant conflicts of interest issues as contemplated by FAR 9.502.

Part 811, Describing Agency Needs

We propose to relocate material from section 811.204 to a new proposed clause at 852.211–75, Product Specifications, without change for purposes of clarity.

Part 812, Acquisition of Commercial Items

We propose to add section 812.102, Applicability, to state that contracts for the acquisition of commercial items are subject to the policies in other parts of the VAAR. However, proposed section 812.102 notes that when a policy in another part of the VAAR differs from a policy in Part 812, Part 812 shall take precedence for the acquisition of commercial items. This proposed section is to make the VAAR consistent with the principles of the FAR at 12.102(c).

We propose to remove the requirement currently at 812.301, Solicitation provisions and contract clauses for the acquisition of commercial items, which requires a contracting officer to include the clause at 852.219–70, Veteran-Owned Small Business, in acquisitions of commercial items because this requirement has been superseded by a similar FAR requirement at 52.212–3. In addition, we propose to make the use of clauses listed in proposed section 812.301, paragraphs (b) and (c), optional rather than mandatory in acquisitions of commercial items and to add the following clauses to the list of clauses in 812.301(b) that may be used in solicitations and contracts for the acquisition of commercial items:

852.209–70, Organizational Conflicts of Interest.
852.211–73, Brand Name or Equal.
852.211–75, Product Specifications.
852.214–71, Restrictions on Alternate Item(s).
852.214–72, Alternate Item(s).
852.214–73, Alternate Packaging and Packing.
852.214–74, Bid Samples.
852.252–70, Solicitation Provisions or Clauses Incorporated by Reference.

We believe the use of these clauses would not be inconsistent with commercial practices. Further, we propose to add the clause at 852.211–74, Liquidated Damages, to proposed paragraph (c), thereby allowing the use of this clause if the contracting officer determines that its use is consistent with commercial practices. We believe that there may be situations where use of a liquidated damages clause would not be inconsistent with commercial practices, such as when failure to deliver supplies or perform services on a timely basis would result in financial harm to the Government.

Part 819, Small Business Programs

We propose to add new section 819.202–1 to allow a contracting officer to prescribe a period less than the standard 30 days for paying a contractor, but not less than 7 days. This proposal is designed to assist small businesses in meeting their financial obligations and is consistent with the FAR requirement at 32.908(c)(2), which does not allow the payment period to be less than 7 days.

We propose to remove provisions currently in section 819.502–2 that require contracting officers to treat certain construction and architect-engineering solicitations as though the Small Business Administration had initiated a set-aside request. These provisions are contrary to the provisions of FAR Subpart 19.10 and underlying statutory authority that provide for unrestricted competition for these services under the Small Business Competitiveness Demonstration Program.

We propose to remove provisions currently in 819.800(d) that require audits to be performed on price proposals under the 8(a) program in excess of $500,000. This matter is covered under FAR 15.404–2, which requires the contracting officer to request an audit only when the information available is inadequate to determine fair and reasonable price. We think that the FAR provision is adequate to protect the Government.

We propose to remove paragraph (b) at section 819.7003 that currently requires the inclusion of the VAAR clause at 852.219–70, Veteran-Owned Small Business, in all solicitations because this requirement has been superseded by a similar FAR requirement at 52.212–3.

Part 832, Contract Financing

We propose to add section 832.006–4 to specify the notification and hearing procedures we would follow before taking an action to reduce or suspend payment to a contractor under FAR 32.006, Reduction or suspension of contract payment upon finding of fraud. We propose to make these changes to comply with FAR 32.006–3, which requires agencies to establish appropriate procedures to implement the policies and procedures of FAR 32.006.

FAR 32.202–1(d) requires an agency to establish procedures for approving the use of unusual contract financing in commercial item acquisitions. We propose to establish those agency procedures in 832.202–1 for approving the use of unusual contract financing because we think they are necessary for ensuring that VA's use of unusual contract financing or commercial advance payment is in the Government's best interest.

FAR 32.202–4(a)(2) states that, subject to agency regulations, the contracting officer may determine that a contractor's financial condition constitutes adequate security for Government financing. The VAAR does not currently say what information a contracting officer should review to assist in making this determination. We propose to add section 832.202–4 setting forth the information a contracting officer should evaluate and consider in determining whether a contractor's financial condition constitutes adequate security. Under this proposal, the contracting officer should obtain any of the following: interim balance sheets or income statements; a cash flow forecast for the contract term; information on contractor financing arrangements disclosing available cash, credit arrangements, and financial exposure; tax account information; descriptions or explanations of documents bearing on the financial vitality of the business; a Dun and Bradstreet report on the company; or any other necessary financial information.

FAR Subpart 32.9 sets forth policies, procedures, and clauses an agency must follow for implementing the "prompt payment" provisions of 5 CFR 1315. FAR 32.904 sets forth the number of days following receipt of goods or services after which Government acceptance is deemed to have occurred unless certain exceptions apply. Paragraphs (b)(1)(ii), (c)(2), (d)(1), and (d)(2) of FAR 32.904 permit a contracting officer to specify a period of more than 7 days for accepting goods or services or more than 14 days to process progress payments or more than 7 days to process the final payment under a construction contract. We propose to add section 832.904 setting forth the following factors a contracting officer should consider when making a decision whether or not to change the payment period: (1) Recent interest payment history; (2) the complexity of the project; (3) workload; (4) work site location. We believe these proposed changes will assist contracting officers in making determinations that are in the best interest of the Government.

Part 833, Protests, Disputes, and Appeals

The VAAR currently requires the contracting officer to suspend contract performance if notified by GAO of a protest within 10 days of award. We propose to remove this provision. This provision has been superseded by FAR changes at 33.104(c) which state that the contracting officer must suspend contract performance or terminate the awarded contract within 10 days after award or within 5 days after a debriefing date offered to a protester for any debriefing required by FAR 15.505 or 15.506, whichever is later.

In general, prior to passage of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), the obligation to continue contract performance of a contract pending a decision on a claim applied only to claims arising under a contract. However, that Act authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's direction pending final decision on a claim relating to the contract. The FAR allows use of this authority only if authorized by an agency. We propose to add sections 833.213 and 833.215 to require the use of this authority in all contracts because we believe this is in the best interest of the Government.

In addition, we propose to remove a statement currently at 833.214(c) that everything discussed at an alternative dispute resolution meeting is confidential. This statement is unwarranted since the agreement between the parties governs confidentiality and the agreement may provide otherwise.

Section 837.270, Special Controls for Letters of Agreement

We propose to remove this section. This section applies to letters of agreement and the section addressing letters of agreement at 801.670–5 is proposed for deletion. If 801.670–5 is deleted, there would be no requirement for this section.

Part 852, Solicitation Provisions and Contract Clauses

We propose to remove section 852.219–70, Veteran-Owned Small Business, because this provision has been superseded by a similar FAR provision in FAR 52.212–3.

We propose to revise clause 852.222–70, Contract Work-Hours and Safety Standards Act—Nursing Home Care Contract Supplement, to correspond to plain language principles, with no substantive change to the intent or meaning of the clause.

We propose to update Alternates I and II of clause 852.236–89, Buy American Act, to correspond to changes made to FAR Part 25. Alternate I would apply to construction contracts valued at $7,611,532 or more, while Alternate II would apply to construction contracts valued between $6,725,000 and $7,611,531.

We propose to revise section 852.270–1 by deleting the term "supervise" and adding, in its place, "monitor." This is to clarify that VA officials do not supervise the work of contractors.

A number of clauses have been renumbered and/or renamed, as follows (if no name appears in the second column, the clause name remains unchanged). Only those clauses that have been renumbered or renamed are included in this chart. Other clauses may have been changed without being renumbered or renamed.

Current VAAR clause and title	Proposed renumbered/ renamed as
852.211–71, Guarantee	852.246–70.
852.211–72, Rejected Goods	852.246–71, Inspection.
852.211–73, Frozen Processed Foods	852.246–72.
852.211–74, Special Notice	852.211–71.
852.211–75, Technical Industry Standards	852.211–72.
852.211–76, Noncompliance with Packaging, Packing, and/or Marking	852.246–73.
852.211–77, Brand Name or Equal	852.211–73.
852.211–78, Liquidated Damages	852.211–74.
852.214–71, Alternate Item(s)	852.214–71, Restrictions on Alternate Item(s); 852.214–72, Alternate Item(s); and 852.214–73, Alternate Packaging and Packing.
852.214–73, Bid Samples	852.214–74.
852.233–70 Protest Content	852.233–70, Protest Content/Alternative Dispute Resolution.
852.237–71, Indemnification and Insurance	852.228–71.
852.246–1, Special Warranties	852.246–74.
852.246–2, Warranty for Construction-Guarantee Period Services	852.246–75.
852.252–1, Provisions or Clauses that Require Completion by the Offeror or Prospective Contractor.	852.252–70, Solicitation Provisions or Clauses Incorporated by Reference.
852.270–4, Commercial Advertising	852.203–70.
852.271–71, Inspection	852.271–74.

The proposed clause content of these clauses remain unchanged with the exception of 852.233–70, Protest Content/Alternative Dispute Resolution, where paragraph (c) is proposed to be added to encourage the use of alternative dispute resolution procedures, as provided in FAR 33.103(c), and clauses 852.271–71, Inspection, and 852.271–74, Inspection, which are proposed to be combined into one clause for simplicity.

Part 873, Simplified Acquisition Procedures for Health-Care Resources

No substantive changes have been made to VAAR Part 873.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), proposed collections of information are contained in Part 832 at sections 832.006–4 and 832.202–4, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. These are proposed new sections that were not previously contained in the VAAR. This notice is to obtain an Office of Management and Budget (OMB) control number for these sections. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to OMB for its review of the collection of information.

There are two other proposed new sections in this proposed rule that could potentially require the collection of information from contractors, section 803.204, Treatment of violations, and section 832.705, Procedures. These sections provide agency procedures for taking action against a contractor for violation of the Gratuities clause (see proposed 803.204) or action to void or rescind a contract for violation of 18 U.S.C. 201–224, all as required by the FAR. VA has not taken any action under the two corresponding sections of the FAR in the past several years and there is no likelihood that VA will annually require the collection of information from 10 or more contractors under these provisions in the future. Therefore, these provisions are exempt from the PRA and VA is not requesting PRA approval from OMB for these provisions.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, with copies to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AK78."

Title and section number: 832.006–4, Procedures.

Summary of collection of information: FAR 32.006 authorizes agencies to reduce or suspend contract payments upon finding of fraud. FAR 32.006–3(a) requires agencies to establish appropriate procedures to implement the policies and procedures of section 32.006. VA is proposing to establish such procedures under section 832.006–4. In order to provide contractors due process when there has been a finding of fraud and when, as a result, VA is proposing to reduce or suspend contract payments, VA must give the contractor notice of that intent and allow the contractor to submit information or argument in opposition to the proposed action.

Description of need for information and proposed use of information: The information will be used by the VA Senior Procurement Executive (the Assistant Secretary for Management) in making a final determination whether or not to reduce or suspend payment under the contract. Submission of this information is voluntary and the collection of the information is intended to give contractors the opportunity to rebut a proposed decision to suspend contract payments.

Description of likely respondents: Entities who have contracts with VA where there has been a finding of fraud on the part of the contractor.

Estimated number of respondents: 10.

Estimated frequency of responses: 1 response for each contract under which there has been a finding of fraud.

Estimated average burden per collection: 5 hours.

Estimated total annual reporting and recordkeeping burden: 50 hours.

Title and section number: 832.202–4, Security for Government financing.

Summary of collection of information: FAR Subpart 32.2 authorizes the use of certain types of Government financing on commercial item purchases. 41 U.S.C. 255(f) requires the Government to obtain adequate security for Government financing. However, FAR 32.202–4(a)(2) provides that, subject to agency regulations, the contracting officer may determine that an offeror's financial condition is adequate security. VA is proposing to issue agency regulations specifying the type of information that the contracting officer should gather to assist the contracting officer in making a determination whether or not an offeror's financial condition constitutes adequate security.

Description of need for information and proposed use of information: The information will be used by the contracting officer to assist in making a determination whether or not the offeror's financial condition is adequate security to permit Government financing of the commercial purchase. Submission of this information is voluntary and collection of this information is intended to give contractors an opportunity to show that their financial condition is adequate security for Government financing.

Description of likely respondents: Offerors that request or require commercial item purchase financing (e.g., commercial interim payments, commercial advance payment) on commercial item acquisitions where the value of the acquisition exceeds $100,000.

Estimated number of respondents: 10.

Estimated frequency of responses: 1 per offer.

Estimated average burden per collection: 1 hour.

Estimated total annual reporting and recordkeeping burden: 10 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of

information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the RFA. The primary purpose of this document is to update the existing VAAR to correspond to FAR requirements and internal VA policy and to conform to plain language principles. Many of the changes are internal to VA and do not impact the public, do not impose any requirements on the public, and thus do not have an economic impact on small entities. The changes that do impact the public are of minimal impact.

The addition of procedures for contractor hearings relative to: (1) Violation of the Gratuities clause (section 803.204); (2) voiding or rescinding a contract (section 803.705); and (3) reducing or suspending payment due to fraud (section 832.006–4) only supplement authorities that are already in the FAR and that are rarely used by VA. They do not add any new authorities that VA could not have exercised under the FAR before issuance of this proposed rule and VA has not taken any action under these authorities against small entities over the past several years. Few, if any, actions are expected to be taken in the future. Thus, there is no impact on a substantial number of small entities.

The changes to Subpart 809.4 relative to suspension and debarment are changes to form and not to substance. The basic procedures remain unchanged and there is no change on the impact to small businesses.

The change to 819.202–1 relative to granting small businesses improved payment terms on contracts is not a new authority, but the VAAR lacked guidance on how to exercise this authority. Title 5 CFR 1315.5 already authorizes agencies to pay small businesses as quickly as possible. This change may encourage VA contracting officers to use this authority more often, but the impact of this provision on small business would be both minimal and entirely beneficial. With the advent of purchase cards, small businesses that accept the cards already receive payment within a matter of a few days following their submission of a request for payment to VISA. This proposed rule provision would have no impact on small businesses that accept the purchase card.

The proposed rule would remove a current provision in section 819.502–2 mandating that certain solicitations be treated as though SBA initiated a set-aside request. This provision is inconsistent with the requirements in FAR subpart 19.10 implementing the Small Business Competitiveness Demonstration Program of 1988, Public Law 100–656 (codified as amended at 15 U.S.C. 644 note). Those authorities require that competition for procurement contracts relating to construction and A/E services be unrestricted. Because Public Law 100–656 and FAR subpart 19.10 already prohibit VA from inferring a set-aside request in the circumstances specified in VAAR 819.502–2, the removal of that superseded provision will not have any effect on small entities.

Adoption of the proposed rule changes in sections 803.204, 803.705, and 832.006–4 would not impose more than minimal costs on any small entities, as VA has not taken action under the corresponding FAR provisions over the past several years and we do not expect to take many, if any, actions in future years. The positive financial benefit to small entities of the proposed change to 819.202–1 is also considered to be minimal. The authority to expedite payments already exists under the FAR and we expect few additional cases where this authority will be used as a result of the proposed addition of these provisions to the VAAR. Even where there are additional uses of this authority, the financial benefit to small entities of expedited payment is expected to be minimal. Therefore, under 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Parts 801, 809, 811, 836, and 852

Government procurement, Recordkeeping and reporting requirements.

48 CFR Parts 802, 804, 805, 806, 807, 808, 812, 813, 814, 815, 816, 817, 824, 832, 837, 846, 849, 853, and 873

Government procurement.

48 CFR Part 803

Antitrust, Conflicts of interest, Government procurement.

48 CFR Part 819

Administrative practice and procedure, Government procurement, Recordkeeping and reporting requirements, Small business, Veterans.

48 CFR Part 822

Government procurement, Labor.

48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 829

Government procurement, Taxes.

48 CFR Parts 831 and 842

Accounting, Government procurement.

48 CFR Part 833

Administrative practice and procedure, Government procurement.

48 CFR Part 841

Government procurement, Utilities.

48 CFR Part 847

Government procurement, Transportation.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

48 CFR Part 871

Government procurement, Loan programs-social programs, Loan programs-veterans, Recordkeeping and reporting requirements, Vocational rehabilitation.

Approved: May 10, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on December 21, 2005.

For the reasons set out in the preamble, 48 CFR Chapter 8 is proposed to be revised to read as follows:

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

SUBCHAPTER A—GENERAL

Part
801 Department of Veterans Affairs Acquisition Regulations Systems.
802 Definitions of words and terms.
803 Improper business practices and personal conflicts of interest.
804 Administrative matters.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

805 Publicizing contract actions.
806 Competition requirements.
807 Acquisition planning.
808 Required sources of supplies and services.
809 Contractor qualifications.
811 Describing agency needs.
812 Acquisition of commercial items.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

813 Simplified acquisition procedures.
814 Sealed bidding.
815 Contracting by negotiation.
816 Types of contracts.
817 Special contracting methods.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

819 Small business programs.
822 Application of labor laws to Government acquisitions.
823 Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.
824 Protection of privacy and freedom of information.
825 Foreign acquisition.
826 Other socioeconomic programs.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

828 Bonds and insurance.
829 Taxes.
830 Cost accounting standards administration.
831 Contract cost principles and procedures.
832 Contract financing.
833 Protests, disputes, and appeals.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

836 Construction and architect-engineer contracts.
837 Service contracting.
839 Acquisition of information technology.
841 Acquisition of utility services.

SUBCHAPTER G—CONTRACT MANAGEMENT

842 Contract administration and audit services.
843 Contract modifications.
844 Subcontracting policies and procedures.
846 Quality assurance.
847 Transportation.
849 Termination of contracts.

SUBCHAPTER H—CLAUSES AND FORMS

852 Solicitation provisions and contract clauses.
853 Forms.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

870 Special procurement controls.
871 Loan guaranty and vocational rehabilitation and employment programs.
872 [Reserved].
873 Simplified acquisition procedures for health-care resources.

Subchapter A—General

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

Sec.
801.000 Scope of part.

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.
801.103 Authority.
801.104 Applicability.
801.104–70 Exclusions.
801.105 Issuance.
801.105–2 Arrangement of regulations.
801.106 OMB approval under the Paperwork Reduction Act.

Subpart 801.2— Administration

801.201 Maintenance of the FAR.
801.201–1 The two councils.

Subpart 801.3—Department Acquisition Regulations

801.304 Department control and compliance procedures.

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.
801.404 Class deviations.

Subpart 801.6—Career Development, Contracting Authority, and Responsibilities

801.601 General.
801.602 Contracting officers.
801.602–3 Ratification of unauthorized commitments.
801.602–70 General review requirements.
801.602–71 Basic review requirements.
801.602–72 Exceptions and additional review requirements.
801.602–73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.
801.602–74 Review requirements for an interagency agreement.
801.602–75 Review requirements—OGC.
801.602–76 Business clearance review.
801.602–77 Processing solicitations and contract documents for legal or technical review—general.
801.602–78 Processing solicitations and contract documents for legal or technical review—Veterans Health Administration field facilities, Central Office (except Office of Facilities Management), the National Acquisition Center, and the Denver Distribution Center.
801.602–79 Processing solicitations and contract documents for legal or technical review—Veterans Benefits Administration.
801.602–80 Processing solicitations and contract documents for legal or technical review—Office of Facilities Management.
801.602–81 Documents required for business clearance reviews.
801.602–82 Documents to submit for legal or technical review—general.
801.602–83 Documents to submit for legal or technical review—contract modifications.
801.602–84 Documents to submit for business clearance reviews.
801.602–85 Results of OGC's review.
801.603 Selection, appointment, and termination of appointment.
801.603–1 General.
801.603–70 Representatives of contracting officers.
801.603–71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.
801.670 Special and limited delegation.
801.670–1 Issuing bills of lading.
801.670–3 Medical, dental, and ancillary service.
801.670–4 National Cemetery Administration.
801.670–5 Letters of agreement.
801.680 Contracting authority of the Inspector General.
801.690 VA's COCP.
801.690–1 Definitions.
801.690–2 General.
801.690–3 Responsibility under the COCP.
801.690–4 Selection.
801.690–5 Requirements for contracting authority.
801.690–6 Appointment.
801.690–7 Termination.
801.690–8 Interim appointment provisions.
801.690–9 Distribution of Certificates of Appointment.
801.695 VA's Appointment of HCAs program.
801.695–1 Policy.
801.695–2 Procedures for appointment of HCAs.
801.695–3 Authority of the HCA.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

801.000 Scope of part.

This part sets out general Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) policies, including information regarding the maintenance and administration of the VAAR, acquisition policies and practices, and procedures for deviation from the VAAR and the Federal Acquisition Regulation (FAR).

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) VA established the VAAR to codify and publish uniform policies and

procedures for VA's acquisition of supplies and services, including construction.

(b) The VAAR implements and supplements the FAR.

801.103 Authority.

The Secretary issues the VAAR under the authority of 40 U.S.C. 121(c), Title 48 of the Code of Federal Regulations (CFR) 1.301 through 1.304, and other authorities as cited.

801.104 Applicability.

(a) Unless otherwise specified in this chapter or excepted by statute (i.e., expenditures of the VA Canteen Service) or other VA regulations, the FAR and VAAR apply to all VA acquisitions (including construction) made with appropriated funds. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

(b) Use the VAAR and the FAR together. The FAR applies to VA acquisitions except as provided in the VAAR.

801.104–70 Exclusions.

The FAR and VAAR do not apply to purchases and contracts that use General Post Funds if using the FAR and the VAAR would infringe upon a donor's right to specify the exact item to be purchased and/or the source of supply (38 U.S.C. 8303).

801.105 Issuance.

801.105–2 Arrangement of regulations.

(a) *General.* The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every VAAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumerics using the following sequence: (a)(1)(i)(A)(*1*)(*i*)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this chapter.

(2) This chapter may be referred to as the Department of Veterans Affairs Acquisition Regulation or the VAAR.

(3) Using the VAAR coverage at 809.106–4(c) as a typical illustration, reference to the—

(i) Part would be "VAAR Part 809" outside the VAAR and "Part 809" within the VAAR.

(ii) Subpart would be "VAAR Subpart 809.1" outside the VAAR and "Subpart 809.1" within the VAAR.

(iii) Section would be "VAAR 809.106" outside the VAAR and "809.106" within the VAAR.

(iv) Subsection would be "VAAR 809.106–4" outside the VAAR and "809.106–4" within the VAAR.

(v) Paragraph would be "VAAR 809.106–4(c)" outside the VAAR and "809.106–4(c)" within the VAAR

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the VAAR shall follow the **Federal Register** form guides.

801.106 OMB approval under the Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the Office of Management and Budget (OMB) has approved the reporting and recordkeeping provisions that are included in the VAAR and has given VA the following approval numbers:

48 CFR part or section where identified and described	Current OMB control No.
809.106–1	2900–0418
809.504(d)	2900–0418
813	2900–0393
832.006–4	2900–xxxx
832.202–4	2900–xxxx
836.606–71	2900–0208
852.207–70	2900–0590
852.209–70	2900–0418
852.211–70	2900–0587
852.211–71	2900–0588
852.211–72	2900–0586
852.211–73	2900–0585
852.214–70	2900–0593
852.228–71	2900–0590
852.236–72	2900–0422
852.236–79	2900–0208
852.236–80 (Alt. I)	2900–0422
852.236–82 through 852.236–84	2900–0422
852.236–88	2900–0422
852.236–89	2900–0622
852.236–91	2900–0623
852.237–7	2900–0590
852.270–3	2900–0589

Subpart 801.2—Administration

801.201 Maintenance of the FAR.

801.201–1 The two councils.

Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council. A designee of the Office of Management will represent VA on the Civilian Agency Acquisition Council.

Subpart 801.3—Department Acquisition Regulations

801.304 Department control and compliance procedures.

The Assistant Secretary for Management is designated as the Department's Chief Acquisition Officer and Senior Procurement Executive (SPE). The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the Department's Deputy Senior Procurement Executive (DSPE). The DSPE is responsible for review of the VAAR and amendments to the VAAR for compliance with FAR 1.304.

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.

(a) Authority to authorize individual deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE.

(b) When a contracting officer considers it necessary to deviate from the policies in the FAR or VAAR, the contracting officer must submit a request to the DSPE for authority to deviate.

(c) The request to deviate must clearly state the circumstances warranting the deviation and the nature of the deviation. The head of the contracting activity (HCA) must sign the request.

(d) The DSPE may authorize individual deviations from the FAR and VAAR when an individual deviation is in the best interest of the Government. When the DSPE authorizes a deviation, the contracting officer must file the authorization in the purchase order or contract file.

801.404 Class deviations.

Authority to authorize class deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE. The DSPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government. The DSPE must comply with the provisions of FAR 1.404 through the SPE.

Subpart 801.6—Career Development, Contracting Authority, and Responsibilities

801.601 General.

(a) A designating official may appoint a contracting officer under FAR 1.603 and VA's Contracting Officer Certification Program (COCP).

(b) The HCA may delegate micro-purchase authority to VA employees under the VA's purchase card program.

(c) An individual may not commit the Government for purchases of supplies, equipment, or services unless the individual has received delegated contracting authority. Individuals making such commitments or acting beyond the scope of their authority may be held financially liable.

801.602 Contracting officers.

(a) Except as otherwise provided by statute, VA regulations, the VAAR, or the FAR, the authority vested in the Secretary to do the following is delegated to the SPE and is further delegated from the SPE to the DSPE:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds for construction and the acquisition of personal property and services (including architect-engineer services).

(2) Issue bills of lading.

(3) Sell personal property.

(4) Enter into leases, sales agreements, and other transactions.

(5) Prescribe and publish acquisition policies and procedures.

(6) Establish clear lines of contracting authority.

(7) Manage and enhance career development of the procurement work force.

(8) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where VA should establish and apply Government-wide performance standards, and to participate in developing Government-wide procurement policies, regulations, and standards.

(9) Oversee the competition advocate program.

(b) The DSPE may further delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers, in accordance with the COCP.

801.602–3 Ratification of unauthorized commitments.

(a) This section applies to unauthorized commitments, including any commitment made by a contracting officer that exceeds that contracting officer's contracting authority and unauthorized commitments made by individuals who lack contracting authority.

(b) A contracting officer must not ratify unauthorized commitments made by other VA personnel or by another contracting officer who lacks authority without prior approval as specified in paragraphs (b)(1) through (b)(3) of this section. The specified approval authorities may not be re-delegated.

(1) At field facilities, for supplies, services (except leases of real property), and construction, the approving authority for unauthorized commitments made by staff assigned to a field facility is the Director of the field facility concerned.

(2) For VA Central Office (VACO) organizations, for supplies, services (except leases of real property), and construction, the approving authorities for unauthorized commitments made by staff assigned to the Administrations are the respective chief financial officers of the Administrations concerned. The approving authority for unauthorized commitments made by staff assigned to any other organization within VACO is the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For unauthorized commitments for leasehold interest in real property, the approving authority is:

(i) The Chief Facilities Management Officer, Office of Facilities Management, for unauthorized commitments for 1–5,000 square feet of space or for 1–100 parking spaces costing less than $50,000 per annum.

(ii) The Under Secretary for Health for unauthorized commitments for 5,001–20,000 square feet of space or for more than 100 parking spaces costing less than $100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet of space and above or for more than 100 parking spaces costing more than $100,000 per annum.

(c) The process for contracting officer requests for ratification will be as follows:

(1) The individual who made the unauthorized commitment will furnish the contracting officer with all records and documents concerning the commitment and a complete written statement of facts that includes the following:

(i) Why the procurement office was not used.

(ii) Why the proposed contractor was selected.

(iii) Other sources that were considered.

(iv) A description of work to be performed or products to be furnished.

(v) The estimated or agreed contract price.

(vi) A citation of the appropriation available.

(vii) A statement of whether the contractor has commenced performance.

(viii) The name of the individual responsible for the unauthorized commitment.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (b) of this section with any comments or information that the approving authority should consider in evaluating the request for ratification. If the approving authority determines that a legal review would be desirable, the approving authority will coordinate the request for ratification with the Office of the General Counsel (OGC) or the Regional Counsel, as appropriate.

(3) If the approving authority authorizes the ratification, the approving authority will return the file to the contracting officer for issuance of a purchase order or contract, as appropriate.

(d) If an otherwise proper contract award exceeds the limits of the contracting officer's delegated authority, the ratifying contracting officer must comply with the above requirements and the approving authority must inform the HCA. The HCA will take action to preclude future instances of such awards.

801.602–70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602–71 through 801.602–76 that is submitted for technical or legal review is submitted through or by an official at least one level above the contracting officer.

(b) Before opening a bid, awarding a contract, or signing a contract-related document as specified in 801.602–71 through 801.602–76, the contracting officer shall ensure that the appropriate VA official, including appropriate staff of the Acquisition Resources Service regional or central office, has reviewed and concurred with the document.

(c) Before signing a contract for a Veterans Benefits Administration field facility for any guidance center or vocational rehabilitation service with an anticipated expenditure of $100,000 or more, the contracting officer shall ensure that the Director, Vocational Rehabilitation and Employment Service, has reviewed and approved the solicitation or proposed contract.

(d) When the following items are for the management, sale, or lease of properties acquired by VA after liquidation of a guaranteed, direct,

acquired, or vendee loan, the review requirements specified in 801.602–71 through 801.602–76 do not apply:

(1) Agreements.

(2) Licenses.

(3) Easements.

(4) Deeds.

(e) If there is insufficient time for the legal review required in 801.602–75(a)(3), the contracting officer (except contracting officers in the Office of Facilities Management) must at least obtain verbal concurrence from Acquisition Resources Service staff before issuing a change order where:

(1) The change order (unilateral agreement) has an anticipated value of $100,000 or more; or

(2) The change order is for a time extension of 60 days or more.

(f) Unless otherwise stated, all dollar values in 801.602–71 through 801.602–76 are expressed in total dollars involved in the acquisition action.

(1) The contracting officer may not consider the positive and negative status of the figures in determining the total dollar values involved.

(2) An acquisition of $550,000 with a trade-in credit of $70,000 would be valued at $620,000 for legal or technical review purposes rather than the net amount of $480,000. An Energy Savings Performance Contract requiring payment from savings of $10,000,000 to the contractor over the life of the contract would be valued at $10,000,000, despite the fact that there is no immediate cost to VA and no payment if there are no savings.

(g) The DSPE may require technical review of any contract-related materials, regardless of dollar value.

(h) Except as set forth in 801.602–73 and 801.602–75, at its discretion, the Office of Acquisition and Materiel Management may request OGC review.

(i) The requirements of this section or sections 801.602–71 through 801.602–76 do not apply to contracts awarded by or on behalf of the VA Office of Inspector General.

(j) Contracting officers and purchase cardholders must ensure compliance with separate guidance on information technology (IT) tracking and approval prior to processing requests for acquisitions of IT and telecommunications software, equipment, and/or services, regardless of dollar value.

801.602–71 Basic review requirements.

Contracting officers must obtain technical review from Acquisition Resources Service staff of the documents set forth in column one of Table 801.602–71 that have anticipated award values equal to or greater than the value in column two.

TABLE 801.602–71

Document	Anticipated contract award value
(a) Supply or service solicitations or quotations (except as provided in 801.602–72 through 801.602–75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of $500,000 or more, inclusive of options).	$500,000 or more.
(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics).	$750,000 or more.
(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations	$1 million or more.
(d) 8(a) construction solicitations and task orders	$500,000 or more.
(e) Request for Proposal (negotiated) construction solicitations and task orders	$500,000 or more.
(f) Proposed task/delivery orders and blanket purchase agreements (includes orders under Federal Supply Schedule contracts).	$500,000 or more.
(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b)	$100,000 or more.
(h) Utility service agreements	$50,000 or more.
(i) Solicitations for advisory and assistance services (see 837.2)	$100,000 or more.
(j) Proposed letter contracts and ensuing formal contracts	$25,000.

801.602–72 Exceptions and additional review requirements.

(a) In addition to the general review requirements in 801.602–71, contracting officers must obtain technical reviews from Acquisition Resources Service staff of any proposed agreement that is unique, novel, or unusual.

(b) Contracting officers must obtain technical reviews from Acquisition Resources Service staff of the following documents relating to contracts requiring bonds (see FAR 28.102–1 and 28.203 through 28.203–5):

(1) An irrevocable letter of credit.

(2) A tripartite escrow agreement.

(3) An individual surety bond.

(c) Contracting officers must obtain technical review from Acquisition Resources Service staff of each proposed novation and change-of-name agreement (see FAR Subpart 42.12).

(d) Contracting officers must obtain technical review from Acquisition Resources Service staff of any solicitation or proposed contract containing an economic price adjustment clause based on a cost index of material or labor (e.g., the urban consumer price index (CPI–U) (*see* FAR 16.203–4(d)) or where one of the economic price adjustment clauses specified in FAR 16.203–4 are used.

(e) Contracting officers must obtain technical review from Acquisition Resources Service staff of any proposed multi-year contract where the cancellation ceiling exceeds 20 percent of the contract amount, regardless of the dollar value of the proposed contract (*see* 817.105–1(b)).

(f) Contracting officers must obtain technical review from Acquisition Resources Service staff of any proposed solicitation where the contract term total of the basic and option periods will exceed 5 years, regardless of the dollar value of the proposed acquisition (*see* 817.204).

(g) Contracting officers must obtain technical review from Acquisition Resources Service staff of a proposed membership agreement in a group purchasing organization.

(h) Contracting officers must obtain technical review from Acquisition Resources Service staff of proposed termination settlements or determinations of amounts due the contractor under a terminated contract that involve the expenditure of $100,000 or more of Government funds. Acquisition Resources Service staff shall obtain legal review. (*See* 849.111–70).

(i) Contracting officers must obtain technical review from Acquisition Resources Service staff of each consignment agreement with an anticipated expenditure of $250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(j) Contracting officers, including purchase cardholders, must obtain technical and legal review of all proposed contracts for conferences where VA's commitment, expenditure, and liability (combined) exceed $25,000. This dollar figure is based on the combination of all direct costs to VA under the contract (e.g., conference rooms, audio-visual charges, refreshments, catering, etc.) and all potential liability (e.g., room guarantee liability, cancellation costs). Even if there is no direct cost to VA, if the proposed contract includes a guarantee on room usage or a cancellation fee that could potentially exceed $25,000, the proposed contract requires legal and technical review. Signing a contract committing VA to hold a conference at a particular hotel is a procurement, and procurement laws and regulations must be followed.

801.602–73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.

For contracts to be awarded under the authority of either 38 U.S.C. 7409 or 38 U.S.C. 8153, contracting officers must obtain technical and legal reviews from the Medical Sharing Office, OGC, and Acquisition Resources Service staff of the following documents:

(a) Each competitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $1,500,000 or more, inclusive of options.

(b) Each noncompetitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $500,000 or more, inclusive of options.

801.602–74 Review requirements for an interagency agreement.

Contracting officers or other staff must obtain technical review from Acquisitions, Operations, and Analysis Service staff of the following documents:

(a) Each proposed VA Central Office interagency agreement with another Federal agency to be awarded under authority of the Economy Act, regardless of dollar value. For the VA Central Office, only the DSPE or designee may sign an interagency agreement.

(b) Each proposed VA field facility interagency agreement with another Federal agency awarded under authority of the Economy Act, involving an anticipated expenditure of $250,000 or more. A VA field facility contracting officer or a contracting officer at the VA National Acquisition Center or the Denver Distribution Center may sign an interagency agreement if the dollar threshold is within the contracting officer's warrant limit.

801.602–75 Review requirements—OGC.

(a) Contracting officers must obtain legal review or concurrence from OGC for the following categories of proposed contractual actions.

(1) Each contract termination, final decision, cure letter, or "show cause" notice proposed under any contract where the total value of the contract is $100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(2) Each dispute or claim from a contractor involving a potential total dollar value of $100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(3) Each proposed contract modification, including any proposed modification to a supply or service contract, where the total value of the modification is $100,000 or more (e.g., a modification for a $60,000 increase and a $50,000 decrease equals $110,000).

(4) Each proposed contract modification granting a time extension of more than 60 days. The Director, Acquisition Resources Service, may waive the pre-approval requirement under this paragraph for an individual facility when the Director determines that the facility has obtained appropriate "consideration" for past time extensions and the extensions were otherwise appropriately granted.

(5) Each proposed modification increasing the value of a letter contract, regardless of dollar value.

(6) Each proposed contract modification for which the contractor takes exception to the accord and satisfaction language specified by VA. The contracting officer may not execute any proposed contract modification under this requirement until the contracting officer receives OGC's concurrence in the proposed language.

(7) An assignment of claims (*see* FAR Subpart 32.8).

(8) Each change or revision to a FAR or VAAR provision or clause or an internal VA-approved clause (e.g., architect/engineer "SP" clauses) not specifically authorized by the regulations.

(9) Each change or revision to a prescribed VA contract form.

(10) A proposed utility construction or connection contract with an anticipated contract award value of $50,000 or more.

(11) Each proposed novation and change-of-name agreement (see 842.1203).

(b) For an action specified in paragraph (a)(1) or (2) of this section, OGC may comment or concur in writing or by telephone.

(c) When a Central Office contracting activity requests legal assistance, the contracting officer will brief OGC on the facts and points of issue to facilitate prompt resolution.

(d) For each solicitation or contract awarded and administered by a Central Office contracting activity, that contracting activity will ask OGC to participate in conferences where legal problems or modifications to contract provisions may be considered and in meetings attended by legal representatives of private parties or other Government agencies. The contracting activity will request assigned procurement counsel participation in drafting correspondence involving significant controversial or sensitive contractual matters.

(e) OGC will prepare any response to the Government Accountability Office (GAO) on GAO bid protests. (*See* 833.104).

801.602–76 Business clearance review.

(a) A business clearance review is a technical review of all solicitation and contract award or modification documents immediately prior to contract award or modification over the specified dollar threshold.

(b) All VA contracting officers must obtain a business clearance review prior to award of any contract, task or delivery order, or blanket purchase agreement or execution of any contract modification with a value of $5 million or more, or prior to award of any lease with a value of $300,000 or more per year.

(c) The dollar threshold in this paragraph is based on the total dollar value of all awards expected under a single solicitation, not the value of each individual award under a solicitation. For example, a solicitation for home oxygen for a VISN might result in multiple awards, each of which has a value of less than $5 million. If the total of all awards under that solicitation will exceed $5 million, the contracting officer must obtain a business clearance review of the entire package, including all proposed individual awards.

801.602–77 Processing solicitations and contract documents for legal or technical review—general.

(a) Under 801.602–70 through 801.602–76, before taking contract action, a contracting officer must ensure

that any required legal or technical review or concurrence is complete. Contracting officers shall not award or sign contracts, task or delivery orders, blanket purchase agreements, or contract modifications prior to receipt of the final legal and technical review. Should the contracting officer disagree with the advice provided, the contracting officer shall document in the contract file the reasons therefore and provide a copy of that document to the reviewing Office of Acquisition and Materiel Management office. The contracting officer must fully implement any accepted review comments as follows:

(1) Before opening the bid or proposal for a competitively awarded contract.

(2) Before executing contract documents for a contract modification or noncompetitive contract award.

(b) The contracting officer must advise potential bidders or offerors of changes made to the solicitation by issuing an amendment. The contracting officer must give bidders and offerors sufficient time for evaluation before the bid or proposal opens.

801.602–78 Processing solicitations and contract documents for legal or technical review—Veterans Health Administration field facilities, Central Office (except Offices of Facilities Management), the National Acquisition Center, and the Denver Distribution Center.

(a) If legal or technical review is required, the documents listed in Table 801.602–78 must be forwarded for review and approval as shown therein.

TABLE 801.602–78

Documents	Person forwarding	Forward to
(1) Proposed solicitations, quotations, contract-related documents, and agreements specified in Table 801.602.71 and in 801.602–72.	Contracting officer	Appropriate Acquisition Resources central or regional office.
(2) Scarce medical specialist and health-care resource solicitations, quotations, and proposed contracts (i.e., contracts to be awarded under the authority of 38 U.S.C. 7409 or 8153) specified in 801.602–73.	Contracting officer	Medical Sharing and Purchase Office.
(3) Interagency agreements specified in 801.602–74.	Approving official, contracting officer	DSPE.
(4) Proposed contract modifications, proposed contract modifications for which the contractor takes exception to the accord and satisfaction language VA specifies, assignment of claims, changes to clauses, and proposed utility connection agreements specified in 801.602–75(a)(3) through (a)(7) and in 801.602–75(a)(9) and (a)(10).	Contracting officer	OGC.
(5) Proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602–75(a)(1) and (a)(2).	Contracting officer	Regional Office of the General Counsel.

(b) The director of the Acquisition Resources Service office conducting the technical review has authority to determine whether to forward documents for legal review.

(c) When the contractor takes exception to the accord and satisfaction language VA specifies in a proposed contract modification, the contracting officer must not sign the modification until OGC concurs with the language proposed by the contractor.

(d) The contracting officer either must fax or send via overnight mail all of the relevant documents on proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602–75(a)(1) and (a)(2). OGC will provide concurrence or comments either in writing or by telephone. The contracting officer must not sign or release a document to the contractor until OGC concurs.

(e) For any VA contract form subject to legal review under 801.602–75(a)(8), the contracting officer must process the change or revision in accordance with VA Manual MP–1, Part II, Chapter 4 and any supplements to it (*http://www.va.gov/publ/direc/benefits/mp1p2ch4.htm*).

801.602–79 Processing solicitations and contract documents for legal or technical review—Veterans Benefits Administration.

(a) A Veterans Benefits Administration contracting officer must ensure that proposed solicitations, quotations, contract-related documents, and agreements listed in Table 801.602–71 are reviewed by the Office of Resource Management prior to document execution. The Office of Resource Management must request legal review of all these documents.

(b) A Veterans Benefits Administration contracting officer must ensure that proposed solicitations or agreements for guidance center and vocational rehabilitation services are reviewed by the Director, Vocational Rehabilitation and Employment Service, if there is an anticipated expenditure of $100,000 or more.

801.602–80 Processing solicitations and contract documents for legal or technical review—Office of Facilities Management.

An Office of Facilities Management contracting officer must submit items specified in 801.602–71, 801.602–72 and 801.602–75 directly to OGC for review.

801.602–81 Documents required for business clearance reviews.

When a bid or offer, proposed contract modification, or proposed lease requires a business clearance review under 801.602–76, the contracting officer must forward the required documents (see 801.602–84) and the following information to the appropriate Acquisition Resources Service central or regional office (Office of Facilities Management contracting officers shall forward the documents to the Office of the General Counsel (025)):

(a) The date on which award is anticipated.

(b) Results or efforts made to determine whether the contractor is responsible under FAR Subpart 9.4.

(c) A determination of price reasonableness.

(d) An explanation (*e.g.*, the source selection decision as specified in FAR 15.308) if the contracting officer proposes an award to a contractor other than the low responsible bidder or offeror.

801.602–82 Documents to submit for legal or technical review—general.

Table 801.602–82 specifies the documents that must be submitted when a legal or technical review is required.

TABLE 801.602–82

Action or document subject to review	Documents to submit
(a) Proposed construction contract	One copy of each solicitation document, excluding drawings. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.
(b) Proposed solicitation contract for scarce medical specialist services or health-care resources.	One copy of the solicitation or proposed or contract and documents required under VA Manual M–1, Part 1, Chapter 34.
(c) All other proposed solicitations, contracts, and agreements	One copy of each document to be used in the contract solicitation or award, and any other document that supports the proposed procurement action. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.

801.602–83 Documents to submit for legal or technical review—contract modifications.

(a) The documents specified in this section related to proposed contract modifications must be submitted to Acquisition Resources Service for review under one or more of the following conditions:

(1) When the total modification value is $100,000 or more.

(2) When the modification is for a time extension of 60 days or more.

(3) Where the contractor takes exception to VA's accord and satisfaction language.

(b) The contracting officer must submit the following documents for review:

(1) A draft of the proposed modification prepared on SF 30, Amendment of Solicitation/ Modification of Contract, specifying the exact language proposed and describing any change in work, time, or cost.

(2) A statement describing the need for the changed work with any back-up documentation, including a copy of the general statement of work in the original contract and any existing contract language that will be modified.

(3) A statement addressing whether the proposed modification is within the original scope of the contract and specifically addressing the facts considered in reaching the conclusion.

(4) A statement analyzing what necessitated the modification (*e.g.*, a design error, technical changes, or medical center requirements).

(5) The contracting officer's technical representative's (COTR) technical evaluation of the proposed change.

(6) A memorandum from the appropriate office indicating that funds are available or a statement concerning the actions that must be taken to secure the required funds.

(7) The names and telephone numbers of the contracting officer and COTR.

(8) Costing information including the following:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The architect/engineer's independent cost evaluation, if applicable and available.

(iv) The contracting officer's Price Negotiation Memorandum under FAR 15.406–3.

(v) Any other relevant costing information, such as independent market research, that VA used or will use as negotiation criteria.

(c) For a proposed modification to an architect/engineer contract, the contracting officer must submit for review each document specified in paragraph (b) of this section and the following additional documents.

(1) A listing of the fees awarded in the original contract and previous modifications.

(2) For a working drawing contract, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(d) For a modification to a construction contract or, where applicable, to an architect/engineer contract, the contracting officer must submit for review a copy of the COTR's mark-up of any drawing that delineates the proposed changed work, including a copy of any pertinent technical specifications. When there is a proposed modification involving numerous changes to drawings and specifications for a VA Central Office project, the drawings and specifications must be available for review in the Office of the Project Director in VA Central Office.

801.602–84 Documents to submit for business clearance reviews.

A contracting officer must submit to Acquisition Resources Service (Office of Facilities Management contracting officers shall forward the documents to the Office of the General Counsel (025)) for review copies of the following documents when a business clearance review is required in accordance with 801.602–76:

(a) The request for contract action, including a justification of need (*i.e.*, the using service purchase request).

(b) The solicitation.

(c) The abstract of the subject bid or offer.

(d) Any applicable Price Negotiation Memorandum.

(e) A statement of the contracting officer's rationale for award.

(f) Any applicable justification and approval under FAR 6.303 and 6.304.

(g) Documents relevant to determining whether the contractor is responsible, including:

(1) Verification that the vendor is not suspended, debarred, or on the Department of Health and Human Services Exclusionary List;

(2) Verification that the vendor has filed any required VETS 100 report (not required if the acquisition is for a commercial item); and

(3) For acquisitions exceeding $10 million, the Equal Employment Opportunity Clearance.

(h) Any applicable approved subcontracting plan.

(i) Documents relevant to price reasonableness.

801.602–85 Results of OGC's review.

(a) When its review is complete, OGC will advise the appropriate Central Office activity or contracting officer that the proposal was approved as submitted or provide them with recommended

changes. If the Central Office activity is notified, the Central Office activity will forward the information to the contracting officer.

(b) When changes are recommended by OGC, if the contracting officer concurs, the contracting officer must take immediate action to amend the document. If the contracting officer does not concur, the contracting officer must discuss the recommended changes with the attorney involved and document in the contract file the reasons why the contracting officer is not following OGC's recommendations.

(c) OGC will complete its review as expeditiously as possible, with due regard for procurement actions that require an unusually short period for completing the procurement.

801.603 Selection, appointment, and termination of appointment.

801.603–1 General.

VAAR 801.690 through 801.690–9 and 801.670 establish the policy and procedures for selecting, appointing, and terminating a contracting officer.

801.603–70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602–2, the contracting officer may designate another Government employee or another contractor as COTR to perform the functions in this section and 801.603–71.

(1) Except as indicated in 801.603–71, a designation under this section must be written, must define the scope and limitation of the representative's authority, and must be addressed to the COTR with a copy forwarded to the contractor.

(2) The COTR may not re-delegate authority received under this paragraph.

(3) The contracting officer may not authorize a representative to make any commitment or change that will affect the price, quantity, quality, or delivery terms of a contract.

(4) A contracting officer acting within his or her warranted contracting authority must authorize any change to a contract.

(b) A contracting officer may authorize his or her technical representative to do the following:

(1) Furnish technical guidance and advice or generally supervise the work performed under the contract.

(2) Take any action authorized in the contract, such as issuing a delivery order, rejecting an unsatisfactory item, ordering a replacement of an unsatisfactory item (materials or services) or declaring a contractor in default on specific delivery orders.

(i) Except for a contract for blood, the contracting officer may delegate this authority only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state.

(ii) A centralized contract for blood must state that a contracting officer at an ordering office may designate representatives and alternate representatives to place a delivery order subject to the same restrictions in paragraph (b)(3) of this section.

(3) Place an oral or other informal delivery order for items such as, but not limited to, bread, milk, and blood against a local indefinite delivery type contract for which there is a blanket purchase arrangement and for which funds have been obligated.

(c) In the administration of research and development contracts, any representative appointed under this section must be acceptable to the contracting officer and the administration head or staff office director concerned.

(d) When the contracting officer intends to designate a representative under this section for a particular solicitation or contract, the contracting officer must include the clause in 852.270–1, Representatives of Contracting Officers, in the solicitation and contract.

801.603–71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Without prior notification to the contractor or vendor, the contracting officer may designate other competent personnel to represent him or her to receive and inspect supplies, equipment and services at a VA facility. The COTR may perform duties such as, but not limited to, the following:

(1) Inspect and certify compliance with the quality and quantity requirements of the purchase order or contract.

(2) Inspect supplies and equipment for condition and quantity and accept supplies, equipment, and services, based on quality inspection made by another authorized representative.

(b) The Director, Library Services, VA Central Office, and the Chief, Library Service, at a field facility may act as representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made directly to the library.

801.670 Special and limited delegation.

The authority vested in the Secretary to execute, award, and administer a contract, purchase order, or other agreement for the expenditure of funds to acquire the specific services set forth in 801.670 through 801.670–4 is delegated to the SPE. The SPE further delegates this authority to the DSPE and to employees appointed or designated to the positions specified in these sections.

801.670–1 Issuing bills of lading.

The authority to issue bills of lading previously contained in this section is rescinded. Except for individual small package shipments (e.g., United Parcel Service, Federal Express, or United States Postal Service small package shipments), no VA employee may issue a bill of lading or otherwise procure transportation services for goods unless the employee has been delegated authority to do so as a warranted contracting officer under the VA Contracting Officer Certification Program (ref. 801.690). All transportation services for goods, other than for small package shipments, require a bill of lading. Except for individual small package shipments, individuals with only micro-purchase authority may not issue bills of lading or otherwise procure transportation services. The dollar value of the bill of lading issued or transportation services acquired must not exceed the delegated authority of the contracting officer. Candidates for appointment as transportation contracting officers whose delegated authority will be limited to the acquisition of transportation services for goods only shall comply with the Education, Experience, and Core Training requirements, if any, in Part 102–117 of title 41 Code of Federal Regulations, the Federal Management Regulation, rather than the requirements in 801.690.

801.670–3 Medical, dental, and ancillary service.

(a) When medical, dental, and ancillary services under $10,000 per authorization are not available from an existing contract or agreement, the following VA officials at VA medical facilities may authorize these services:

(1) The Chief of Staff and the physician assigned the responsibility for the ambulatory care function.

(2) Chief, Medical Administration Service.

(3) Person designated by the facility director to perform medical administration functions.

(b) Forms specified in Part 853 shall be used for ordering services under this paragraph from existing contracts.

(c) The officials named in paragraph (a) of this section may designate one or more of their subordinates to exercise

the authority in paragraph (a) of this section.

(d) A designation under this section must be in writing and specifically set forth the scope and limitations of the designee's authority.

801.670–4 National Cemetery Administration.

The Directors of Logistics Management Service, the Centralized Contracting Division, and the Construction Support Division are authorized to procure supplies, equipment and non-personal services (including construction) for National Cemetery Administration (NCA) field facilities and other NCA offices when there is an emergency during which the servicing supply organization cannot be used.

801.670–5 Letters of agreement.

(a) Letters of agreement shall not be used. The authority previously contained in this section is rescinded.

(b) The VA Office of Inspector General may issue contracts for commercial items, including services, using a letter format (see FAR 12.204(a)), provided billing information and required clauses are included in the contract. If the dollar value of the acquisition will exceed the simplified acquisition threshold, this is a deviation from the requirement to use Standard Form 1449 at FAR 12.204(a).

801.680 Contracting authority of the Inspector General.

(a) Under section 6(a) of Public Law 95–452 (October 12, 1978), the Inspector General may do the following:

(1) Contract or arrange for audits, studies, analyses, and other services with public agencies and with private persons.

(2) Make payments necessary to carry out the provisions of the Act, to the extent and in amounts provided in advance by appropriations acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may ask the servicing head of the contracting activity for assistance in developing appropriate contract or agreement documents.

(c) The FAR applies to contracts made under paragraph (a) of this section. Such contracts also are subject to provisions of the VAAR that implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority. (For example, management controls and approvals specified in Subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General.)

801.690 VA's COCP.

The provisions of 801.690 through 801.690–9 establish the policy and procedures for the VA-wide Contracting Officer Certification Program (COCP).

801.690–1 Definitions.

Accredited college or university means a college or university that has been accredited by an accrediting agency recognized by the U.S. Department of Education (see *http://www.ed.gov/admins/finaid/accred/index.html*) or accredited by a foreign government.

ACEP means the Acquisition Continuing Education Program, a program to provide VA's acquisition workforce with classroom knowledge to further develop their acquisition skills. The program supports VA personnel in the GS 1102 contracting series, other contracting officers (regardless of General Schedule series), contracting officers' technical representatives, and contracting officers' representatives to ensure that they meet the continuing education requirements mandated by OFPP Policy Letter No. 05–01, Developing and Managing the Acquisition Workforce, dated April 15, 2005 (see *http://www.whitehouse.gov/omb/procurement/policy_letter_05–01.html*) and other official guidance.

Acquisition Workforce means those VA employees who are classified as: GS 1102 contract specialists; GS 1105 purchasing agents; contracting officers warranted above the micro-purchase threshold; program and project managers and other significant acquisition-related positions as otherwise identified by the VA Chief Acquisition Officer; contracting officers' technical representatives; and contracting officers' representatives. The acquisition workforce also includes a limited number of employees that perform significant acquisition-related responsibilities, (e.g., employees in the GS 345, GS 801, GS 1101, GS 1106, GS 1170, GS 2001, GS 2003, and GS 2005 job series and select program officials).

Appointment means the delegation of authority to any VA employee to enter into, administer, or terminate contracts and to make related determinations and findings.

ATCD means the Acquisition Training and Career Development Division.

Certificate of Appointment as Contracting Officer is a signed certificate on Standard Form 1402 used for the written appointment of contracting officers that states the scope, limitation, and term of the contracting officer's authority.

CLP means continuous learning points, as provided in OFPP Policy Letter 05–01. One CLP is generally equivalent to one hour of classroom training.

COCB means the Contracting Officers Certification Board, a group of VA officials, listed at 801.690–3(b), who evaluate and recommend to the DSPE individuals for delegation of contracting authority as Level II or Level III (Senior Limited or Unlimited) contracting officers.

COCP means the Contracting Officers Certification Program, VA's program established for the selection, appointment, and termination of appointment of contracting officers.

COQS means the Contracting Officer Qualification Statement, a document completed by a candidate for a position as contracting officer that accompanies the request for contracting authority. The certified statement includes information on experience, education, training, and pertinent contracting authority information. The COQS is accompanied by supporting documentation such as training certificates, copies of prior and current warrants, college transcripts, and other relevant information.

Federal Acquisition Certification (see OFPP Policy Letter 05–01, paragraph 8) means a certification program developed by the Federal Acquisition Institute and OFPP that generally reflects a Government-wide standard for education, training, and experience leading to the fulfillment of core competencies in acquisition-related disciplines.

Selection means the appointment of an employee as a contracting officer. The selection process shall consider the complexity and dollar value of the assigned work, the candidate's experience, training, education, business acumen, judgment, character, reputation, and knowledge of acquisition policies, rules and regulations.

Skills Currency means the level of knowledge and abilities that a GS 1102 contract specialist or a contracting officer attains as the result of participating in a minimum of 80 CLPs of continuing education or training every two years. The training is intended to ensure that the employee maintains current acquisition knowledge and skills, as mandated by OFPP Policy Letter No. 05–01 and other official guidance.

Termination means the revocation or rescission of an appointment as contracting officer.

801.690–2 General.

(a) The VA COCP applies to all programs of VA except for the

appointment of contracting officers under the Inspector General Act (Public Law 95–452) and for contracting officers designated in 801.670 through 801.670–5. The COCP also applies to VA officials granted authority to enter into sales agreements (see separate guidance under VA's Directives Management System)

(b) A Certificate of Appointment is not required for a contracting officer designated in 801.670 who exercises special and limited delegations of authority.

(c) The COCP is based on the following levels and types of authority:

(1) *Level I.* Authority for expenditures at or below the simplified acquisition threshold (see FAR 2.101) for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts (except Federal Supply Schedule (FSS) contracts), within the specified geographical limits of the contracting officer's warrant. For FSS contracts, Level I authority includes authority for expenditures up to the maximum order threshold of the FSS contract, within the specified geographical limits of the contracting officer's warrant. This level was formally titled "Basic" and any current Basic Level warrant need not be reissued solely to change the title.

(2) *Level II.* Authority for expenditures at or below $5,000,000 or as stated on Standard Form 1402 for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts, within the specified geographic limits of the contracting officer's warrant. This level was formally titled "Intermediate" and any current Intermediate Level warrant need not be reissued solely to change the title.

(3) *Level III (Senior Limited).* Authority for expenditures at or below the dollar threshold and within the geographical limits specified on the contracting officer's warrant, Standard Form 1402. This level was formally titled "Senior Limited" and any current Senior Limited Level warrant need not be reissued solely to change the title.

(4) *Level III (Senior Unlimited).* Authority granted to VA's contracting officers in contracting activities (e.g., the VA National Acquisition Center, Hines, IL, and Acquisition Operations Service, VA Central Office, Washington, DC) that are charged with meeting Department-wide acquisition needs of VA and its customers. The authority is for expenditures at any dollar level without geographical restriction. This level was formally titled "Senior Unlimited" and any current Senior Unlimited Level warrant need not be reissued solely to change the title.

(5) *Multi-VISN.* Authority at the Level II and Level III (Senior Limited) Levels, granted by the DSPE, that permits procurement consolidations among Veterans Health Administration VISNs, Veterans Benefits Administration Area Offices, and other Government agencies that exist outside the contracting officer's normally assigned geographical area of appointed authority. Multi-VISN authority is generally granted for procurement-specific requirements or to groups or consortiums established for regional contracting initiatives.

(d) *Micro-purchase Level.* Micro-purchase Level authority, not to exceed the micro-purchase threshold (currently $2,500 ($2,000 for construction), see FAR 2.101) is separately addressed under VA's purchase card program. Under that program, the HCA may delegate authority to a VA employee as a purchase cardholder through the issuance of VA Form 0242.

801.690–3 Responsibilities under the COCP.

(a) *DSPE.* The DSPE is responsible for the following:

(1) Administering and overseeing the COCP;

(2) Appointing and terminating Level II and Level III (Senior Limited and Unlimited) contracting officers;

(3) Establishing and developing additional agency-specific training and determining the levels of contracting authority needed under the COCP; and

(4) Developing and implementing policy, procedures, and guidance for VA's acquisition program.

(b) *The Chief, Acquisition Program Management Division.* The Chief, Acquisition Program Management Division, serves as the Executive Secretary to the COCB and is responsible for the following:

(1) Coordinating requests for contracting authority with the COCB;

(2) Proceeding accordingly with appropriate action to carry out the decisions of the DSPE and the COCB;

(3) Maintaining individual records on the appointment and termination of appointment of contracting officers. Records on contracting officers include HCA certifications and qualification statements, Certificates of Appointment, and other supporting documentation used to grant authority; and

(4) Ensuring appropriate and timely disposition of records through Office of Acquisition and Materiel Management's Records Control Officer.

(c) *The COCB.* (1) The Director, Acquisition Resources Service, will chair the COCB.

(2) COCB membership consists of:

(i) The Chief, Acquisition Program Management Division; and

(ii) The Director, ATCD.

(d) *HCAs.* HCAs are responsible for the following:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services required by the activity to which the HCA is assigned.

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations;

(3) Appointing or terminating the appointment of contracting officers at the Micro-purchase and Level I Levels within their assigned activity;

(4) Establishing procedures and maintaining records for the appointment and termination of appointment of Level I contracting officers and purchase cardholders at the Micro-purchase Level. Records maintained on contracting officers shall include the contracting authority, certification and qualification statements;

(5) Recommending to the DSPE the appointment or termination of appointment of contracting officers at the Level II and Level III (Senior Limited or Unlimited) Levels of authority, certifying the candidate's qualifications, and justifying the organizational need;

(6) Ensuring that all GS 1102 contract specialists and other contracting officers meet the minimum core training and continuing education requirements; and

(7) Certifying that the assigned acquisition workforce meets the minimum training, education, and skills currency requirements prescribed by OFPP and the DSPE.

(e) *VA Acquisition Workforce.* All employees identified as members of VA's acquisition workforce (see 801.690–1) are responsible for maintaining records that include certificates of acquisition training, continuing education, college transcripts, work experience, and other supporting documentation needed to substantiate successful completion of all warrant requirements. These employees shall enroll in VA's Center for Acquisition and Materiel Management Education Online (CAMEO) and in the Acquisition Career Management Information System (ACMIS), the data systems that serve as the repositories of required information on VA's acquisition workforce.

801.690–4 Selection.

(a) The HCA may appoint Level I contracting officers or submit written requests to the DSPE for appointment of Level II or Level III (Senior Limited or

Unlimited) contracting officers. A VA official one level above the HCA may submit a written request to the DSPE for the appointment of a HCA as a contracting officer.

(b) Appointment can only be requested in those circumstances where it can be demonstrated that a valid organizational need exists. In making this assessment and justification, the HCA will consider the complexity of the work, volume of actions, organizational structure, and human resource management actions and forecasts, such as rates of retirement, reassignment, and retention.

(c) The request shall consist of the following:

(1) Justification for requesting contracting authority to be granted;

(2) Certification that the candidate's experience and training meet the established minimum qualifications for the requested contracting authority;

(3) Certification that the candidate has a satisfactory-or-above performance rating;

(4) Certification that the candidate maintains high standards of conduct and avoids apparent or actual conflicts of interest, and

(5) Certification that the candidate has appropriate working knowledge of the FAR, VAAR, and other applicable laws, regulations, policies and procedures.

(d) The accompanied COQS shall include the following information:

(1) Candidate's name, position title, series, grade, and location;

(2) Candidate's relevant acquisition or business-related experience that reflects the required number of years of progressive work assignments leading to broader technical abilities;

(3) Education background, including number of acquisition or business-related college credits;

(4) List of core training requirements or equivalent courses that have been successfully completed;

(5) List of continuing education requirements successfully completed within the last two years;

(6) List of current and prior warrant authorities, limitations, and information on termination and cause for termination;

(7) List of other acquisition related activities or memberships;

(8) Certification that the statement is accurate and complete to the best of the candidate's knowledge; and

(9) Attached copies of acquisition or business-related training certificates, course certificates, and diplomas, transcripts, or degrees from accredited colleges or universities.

801.690–5 Requirements for contracting authority.

(a) Effective January 1, 2007, no individual, regardless of job series, may be issued a new contracting officer warrant above the micro-purchase threshold unless the individual meets the requirements for Federal Acquisition Certification (Certification) for the applicable warrant level as specified in OFPP Policy Letter 05–01 and other official guidance. A new contracting officer warrant is defined in OFPP Policy Letter 05–01 as a warrant issued for the first time at a department or agency. Certification will not be required for current warranted contracting officers at their current warrant level to retain their current warrant, but will be required before a higher level warrant can be issued. Certification includes minimum requirements for education, training, and experience. A candidate for a warrant must have at least a satisfactory-or-above performance rating during the most recent performance period.

(b) Until January 1, 2007, the minimum requirements for qualifying as a contracting officer specified in Tables 801.690–5(b)(1) and 801.690–5(b)(2) shall apply.

TABLE 801.690–5(B)(1)

	For level I	For level II
(i) Experience	6 months of progressive work assignments and orientation within the last 3 years in an acquisition-related field.	2 years of progressive work assignments within the last 4 years in an acquisition-related field leading to broader technical abilities.
(ii) Education	High School Diploma or General Educational Development (GED).	For Grades GS–12 and below, a Bachelor's Degree or 24 business's related college credits from an accredited college or university; or For GS 13 and above, a Bachelor's Degree that is supplemented by or includes 24 business-related college credits from an accredited college or university.
(iii) Skills Currency (Minimum number of CLPs every 2 years).	80 CLPs	80 CLPs.
(iv) Performance	Satisfactory-or-above	Satisfactory-or-above.
(v) Core Training, as follows (or approved equivalent courses):	For Level III (Senior Limited)	For Level III (Senior Unlimited)
Basic Acquisition Course or Simplified Acquisition Procedures Course.	X	X.
Acquisition Planning I (2 week course)		X.
Contract Formation I		X.
Contract Administration I		X.
Negotiation Techniques		X.
Cost Analysis		X.
Price Analysis		X.
Acquisition Planning II		X.
Contract Formation II		X.
Contract Administration II		X.

TABLE 801.690–5(B)(2)

	For level III (senior limited)	For level III (senior unlimited) (national programs)
(i) Experience	3 years of progressive work assignments in an acquisition-related field leading to broader technical abilities within the last 5 years.	6 years of progressive work assignments in acquisition, 3 years of which were in an acquisition-related field leading to broader technical ability within the last 5 years.
(ii) Education	Bachelor's Degree that is supplemented by or includes 24 business-related college credits from an accredited college or university.	Bachelor's Degree that is supplemented by or includes 24 business-related college credits from an accredited college or university.
(iii) Skills Currency (Minimum number of CLPs every 2 years).	80 CLPS	80 CLPs.
(iv) Performance	Satisfactory-or-above	Satisfactory-or-above.
(v) Core Training, as follows (or approved equivalent courses):		
All courses required of a Level II contracting officer as specified in Table 801.690–5(b)(1).	X	X.
Intermediate Contract Pricing (2 week course)	X	X.
Government Contract Law (2 week course)	X	X.

(c) Effective January 1, 2007, before an individual can be issued a Level I warrant for acquisitions above the micro-purchase threshold, an individual will be required to meet the Certification requirements in OFPP policy guidance. The minimum education and training requirements for a Level I warrant are expected to include a baccalaureate degree or 24 semester hours of business-related college credits and approximately 240 CLPs (six weeks) of acquisition-related classroom training.

(d) *Multi-VISN.* The HCA shall obtain written concurrence from other affected VISNs or Area Offices when requesting Multi-VISN contracting authority.

(e) *Core Training.* (1) Contracting officers and non-warranted contract specialists shall complete the required coursework and on-the-job training needed to possess the established competencies listed in OFPP's Federal Acquisition Institute Contract Specialist Training Blueprints (*http://www.fai.gov/prodev/contract.htm*).

(2) The Chief, ATCD, oversees the ATP and the 11 core training courses listed in Tables 801.690–5(b)(1) and 801.690–5(b)(2).

(3) Training course equivalency will be determined and approved by Chief, ATCD. Candidates should contact the Chief, ATCD, for an equivalency determination and must furnish any information or evidence necessary to support the request. Appeals of decisions may be made to the VA Chief Acquisition Officer and the decisions of the Chief Acquisition Officer shall be final.

(f) *Skills Currency.* (1) Contracting officers and non-warranted contract specialists who have completed the core training requirements shall obtain a minimum of 80 CLPs of continuing education or training every two fiscal years to stay abreast of current acquisition knowledge and skills as mandated by OFPP. The HCA (for Level I contracting officers) and the Chief, ATCD (for Level II and Level III contracting officers), shall make written determinations each October 1st on whether or not the required CLPs, as specified in OFPP guidance, were completed during the two prior fiscal years. The HCA shall assign CLP values to training taken by Level I contracting officers for training that does not have pre-assigned CLP or continuing education unit (CEU) values assigned to the training by the provider. The Chief, ATCD, shall assign CLP values to training taken by Level II and Level III contracting officers for training that does not have pre-assigned CLP or continuing education unit (CEU) values assigned to the training by the provider. Values shall be assigned based on guidance provided by OFPP and the combined efforts of the Federal Acquisition Institute and the Defense Acquisition University. Disputes regarding the CLP or CEU values assigned to training shall be resolved by the Associate Deputy Assistant Secretary for Acquisitions.

(2) The Chief, ATCD, is responsible for the management of the ACEP, the program that assists contracting officers and contract specialists to meet the training requirements.

(3) An expiring warrant will not be re-issued if the contracting officer has not met the continuing education or training requirement.

(g) *Education.* (1) The 24 business-related college credits shall be in any combination of the following fields of study at an accredited college or university: Accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(2) The Chief, ATCD, will make the final determination whether a course is accepted as business-related for the purpose of granting contracting authority.

(3) American Council on Education (ACE) credits are not considered as college credits until they are converted and included on a transcript from an accredited college or university.

(h) *Grandfather Provision for the Education Requirement.* (1) VA contracting officers, regardless of grade level, who currently hold Level I, Level II, or Level III (Senior Limited or Unlimited) warrants are considered as having met the Experience, Education, and Core Training requirements in Tables 801.690–5(b)(1) and 801.690–5(b)(2) for that warrant level. This includes transfers or laterals to other VA contracting activities with similar geographical restrictions. Contracting officers who are promoted up to a GS–12 can maintain their current warrant level authority.

(2) This Grandfather provision does not cover new VA employees, current VA employees who are not warranted, or former VA employees who held contracting authority at their previous Federal Government agencies or VA positions. VA contracting officers who are promoted to GS 13-and-above will no longer be covered by this Grandfather provision and, therefore, must meet the current Experience, Education, and Core Training requirements for the specific warrant authority that they currently hold or to which they wish to be appointed.

Contracting officers requesting a higher level warrant (e.g., from Level I to Level II or from Level III (Senior Limited) to Level III (Senior Unlimited)) must also meet the current Experience, Education, and Core Training requirement for the specific warrant authority requested.

(3) This Grandfather provision for retaining a contracting officer's current warrant authority is voided if the contracting officer does not fully meet the minimum Skills Currency requirement prior to warrant expiration or when the warrant authority is suspended or revoked. The contracting officer will then need to meet all of the current warrant prerequisites before a new warrant can be issued or before the suspended or revoked warrant can be reinstated.

(i) The training requirements for contracting officers whose delegated authority is limited to the acquisition of transportation services, as provided in Part 102–117 of title 41 Code of Federal Regulations, the Federal Management Regulation, shall be as specified therein.

(ii) [Reserved]

801.690–6 Appointment.

(a) Only the DSPE (for Level II and Level III (Senior Limited or Unlimited)) and the respective HCA (for Level I) may sign the Certificate of Appointment as Contracting Officer. HCAs are authorized to grant Micro-purchase Level and Level I contracting authority up to the thresholds specified for these authorities at 801.690–2(c). The HCA may recommend a candidate to the DSPE for appointment as a Level II or Level III contracting officer. Only the DSPE may grant Level II, Level III (Senior Limited or Unlimited), and Multi-VISN authority.

(b) All Certificates of Appointment as Contracting Officers and other written documents must clearly state any limitations or restrictions on the authority.

(c) The Privacy Act of 1974 applies to the information collected during contracting officer selection and appointment.

801.690–7 Termination.

(a) The DSPE (for all Levels) or HCA (for Micro-purchase Level and Level I) may revoke or rescind the appointment of a contracting officer at any time. HCAs may submit a recommendation to revoke or rescind the appointment of a contracting officer's Level II or Level III (Senior Limited or Unlimited) warrant to the DSPE. Revocation may be based on the following circumstances:

(1) There is no longer a need for the appointment;

(2) There has been a personnel action such as a resignation, retirement, transfer;

(3) Unsatisfactory performance;

(4) Alleged official misconduct pending criminal or administrative investigations;

(5) Failure to meet training or skills currency requirements;

(6) A contracting officer taking an action that exceeds his or her authority;

(7) Blatant disregard for adhering to acquisition regulations, policies and procedures; or

(8) Situations similar to those in paragraphs (a)(1) through (7) of this section that may require remedial action.

(b) The HCA should discuss a termination of contracting authority for cause with the servicing Human Resource Management Office to determine the impact, if any, on the contracting officer's continued employment.

(c) All changes in the status (e.g., departure; name, position, or grade change) of a micro-purchase cardholder or Level I warrant holder shall be reported in writing by the individual's supervisor to the HCA within five workdays of occurrence. All changes in the status of a Level II or Level III (Senior Limited or Unlimited) warrant holder shall be reported in writing by the HCA to the DSPE within five workdays of occurrence. Level II or Level III (Senior Limited or Unlimited) warrants that are terminated, rescinded or superseded should be returned to the Director, Acquisition Resources Service (049A5), citing the exact reason for the termination, rescission, or supersession.

801.690–8 Interim appointment provisions.

(a) To ensure availability of procurement support, an interim appointment may be granted for a limited period of time when a candidate does not fully meet the minimum qualifications for Experience, Education, or successful completion of all acquisition Core Training requirements in Tables 801.690–5(b)(1) or 801.690–5(b)(2), if applicable, or as provided in OFPP guidance. All interim appointments made after January 1, 2007, for individuals who do not meet the minimum Experience, Education, or Core Training requirements for Levels I through III shall be signed by the SPE, without power to redelegate, as provided in OFPP guidance.

(1) In a request for an interim appointment, the HCA must include the information required by 801.690–4 on the candidate's training, experience, performance, and education, and a justification for the interim appointment.

(2) The HCA must ensure that the candidate with interim appointment meets the minimum Experience, Education, and Core Training requirements within the time specified on the warrant.

(3) A contracting officer with interim appointment should successfully complete all remaining required courses or equivalent courses within the time specified on the warrant.

(b) At the HCA's written request, a permanent warrant may be issued during the interim appointment period when the contracting officer has satisfactorily met the requirements. The appropriate documentation (copies of course certificates) must be submitted with the HCA's request.

(c) An interim appointment may be appropriate for instances such as organizational changes or sudden, extreme, and unexpected increases in workload complexity and/or volume.

(d) Interim appointments will not be granted under the following circumstances:

(1) To a candidate who is warranted but does not meet the Education or Core Training requirements for higher level (e.g., from Level I to Level II) contracting authority (unless waived by the SPE);

(2) To a candidate who does not have a current record of satisfactory-or-above performance; or

(3) To a contracting officer whose authority has expired and who has not met the continuing education requirement during the two preceding years.

(e) Generally, an interim appointment may not exceed one year.

801.690–9 Distribution of Certificates of Appointment.

(a) The DSPE or HCA will issue an original Certificate of Appointment as Contracting Officer to the appointed candidate, who must display the Certificate at his or her duty station.

(b) The HCA shall file a copy of the warrant in the delegation of authority file.

(c) The contracting officer must furnish a copy to the respective fiscal activity.

(d) Each Certificate will be serially numbered, reflecting the facility number, the year of issuance (*e.g.*, facility number—year of issuance (2 digits)—sequential number, 560–04–10), and have an effective and expiration date.

801.695 VA's Appointment of HCAs Program.

801.695–1 Policy.

(a) VA's policy is to have a minimum number of HCAs. Generally, there will be one HCA per VISN, other major VA organizational element, or major acquisition organization. The authority vested in the Secretary to select, appoint, and terminate HCAs is delegated to the SPE and is further delegated from the SPE to the DSPE.

(b) Under the FAR at 1.601(a) and 2.101, an HCA is a senior level position. The official who occupies this position should have the education, training, and experience necessary to make the decisions required of an HCA.

(c) Except as provided in the FAR, an HCA may delegate his or her authority to other individuals within the HCA's acquisition activity. Such delegations must be in writing and must set forth the specific limitations on the designee's authority. The delegation may include authority to appoint a contracting officer at the Micro-purchase or the Level I Levels (see 801.690–2).

801.695–2 Procedures for appointment of HCAs.

An HCA must be appointed in writing by the DSPE and in accordance with internal VA policy. The written delegation must state any limitation on the HCA's authority, other than a limitation contained in an applicable law or regulation.

801.695–3 Authority of the HCA.

(a) The HCA has overall responsibility for managing the procurement program assigned to the activity.

(b) The HCA's level of contracting authority, if any, shall be specified in the HCA's appointment letter.

(c) The HCA has the authority to appoint and terminate contracting officers with authority to conduct procurements of up to and including simplified acquisition threshold or the maximum order threshold or limitation for orders placed against Federal Supply Schedule contracts, and to terminate such appointments (Micro-purchase and Level I Levels).

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

Sec.
802.101 Definitions.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 802.1—Definitions

802.101 Definitions.

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer's Technical Representative or Contracting Officer's Representative.

D & S Committee means the VA Debarment and Suspension Committee, a committee consisting of the Director, Acquisition Resources Service (chair), and representatives of the Office of Management, Office of Inspector General, and the program office to which the particular debarment or suspension case relates. A representative from OGC will serve as legal counsel to the D & S Committee.

Debarring official means the DSPE, who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. Authority to impose debarment is delegated to the SPE and is further delegated to the DSPE.

DSPE means the Deputy Senior Procurement Executive, who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The DSPE must be career member of the Senior Executive Service.

FAR means the Federal Acquisition Regulation.

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

OGC means the Office of the General Counsel.

SPE means the Senior Procurement Executive who is also the Assistant Secretary for Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

Suspending official means the DSPE. Authority to impose suspension is delegated to the SPE and is further delegated to the DSPE.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

VISN means Veterans Integrated Service Network, an integrated network of VA facilities that are focused on pooling and aligning resources to best meet local needs in the most cost-effective manner and provide greater access to care.

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—Safeguards

Sec.
803.101 Standards of conduct.
803.101–3 Department regulations.
803.104 Procurement integrity.
803.104–7 Violations or possible violations.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.
803.204 Treatment of violations.

Subpart 803.3—Reports of Suspected Antitrust Violations

803.303 Reporting suspected antitrust violations.

Subpart 803.4—Contingent Fees

803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.
803.570 Commercial advertising.
803.570–1 Policy.
803.570–2 Contract clause.

Subpart 803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

803.602 Exceptions.

Subpart 803.7—Voiding and Rescinding Contracts

803.703 Authority.
803.705 Procedures.

Subpart 803.8—Limitation on the Payment of Funds to Influence Federal Transactions

803.804 Policy.
803.806 Processing suspected violations.

Subpart 803.70—Contractor Responsibility to Avoid Improper Business Practices

803.7000 Display of the VA Hotline poster.
803.7001 Contract clause.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 803.1—Safeguards

803.101 Standards of conduct.

803.101–3 Department regulations.

(a) Part O of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials.

(b) Subpart B of 38 CFR Part O states the employee financial disclosure requirements.

803.104 Procurement integrity.

803.104–7 Violations or possible violations.

(a) Contracting officers must forward the information required by FAR 3.104–7(a)(1) to the HCA. In consultation with

OGC, the HCA may make the determination and concurrence specified in FAR 3.104–7(a)(1).

(b) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see FAR 3.104–3), the HCA will take action in accordance with FAR 3.104–7(b). The HCA must also report violations or possible violations to the VA Office of Inspector General.

(c) The authority to make the determinations specified in FAR 3.104–7(b)(5) and 3.104–7(d)(2)(ii)(B) is delegated to the SPE and is further delegated to the DSPE.

(d) As provided in FAR 3.104–7(f), the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

(a) Any VA employee must report a suspected violation of the Gratuities clause to the contracting officer or a higher level VA official.

(b) The report must identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(c) The contracting officer or higher level official must supplement the file with appropriate information and promptly forward the report to the DSPE, with copies to the VA Office of the Inspector General and the Assistant Secretary for Management.

803.204 Treatment of violations.

In providing the notice and hearing required by FAR 3.204, the SPE may make the determinations required by FAR 3.204. This authority is further delegated to the DSPE. The DSPE shall use the following procedures to determine whether or not a violation of the Gratuities clause has occurred:

(a) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the DSPE shall refer the matter to the D & S Committee to conduct a fact-finding. Upon completion of the fact-finding, the D & S Committee shall present the facts and recommendations for further action to the DSPE.

(b) If the DSPE finds a basis for further action, the D & S Committee shall prepare a notice under FAR 3.204 for signature of the DSPE. If suspension or debarment is also being considered, the D & S Committee shall also follow the procedures contained in 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method the provides signed evidence of receipt. In the case of a business, the D & S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.

(c) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice, the D & S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.204.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice, the D & S Committee must consider the information in the reply before the D & S Committee makes its recommendation to the DSPE.

(e) The D & S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D & S Committee, in person or through a representative, to present information or argument. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D & S Committee shall prepare a report of the presentation for submission to the DSPE and must consider the information presented when making its recommendation to the DSPE.

(f) If the D & S Committee finds that the contractor's submission in opposition to further action under FAR 3.204 raises a genuine dispute over facts material to the action, then the D & S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to the VA Board of Contract Appeals for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The DSPE should consider any mitigating factors, such as those listed at FAR 9.406–1 and 809.406–1, prior to making a final decision.

Subpart 803.3—Reports of Suspected Antitrust Violations

803.303 Reporting suspected antitrust violations.

(a) Any VA employee who suspects or has evidence of possible antitrust violations must report the suspected violations, in accordance with FAR 3.303, to the VA Office of Inspector General and to the Assistant Secretary for Management for review and submission to OGC.

(b) Either the General Counsel or the Inspector General will determine whether to submit the case to the U.S. Attorney General.

Subpart 803.4—Contingent Fees

803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees must report the matter to the contracting officer or to the VA Office of Inspector General.

(b) In addition to the requirement in paragraph (a) of this section, a contracting officer must report a suspected or actual misrepresentation or violation to the DSPE.

(c) Before taking any administrative action under FAR 3.405, a contracting officer must consult with his or her Regional Counsel. A contracting officer in the Central Office must consult with OGC.

(d) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through OGC or the VA Office of Inspector General, with a copy to the Assistant Secretary for Management. The General Counsel or the Inspector General will determine whether to forward the referral to the Department of Justice.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

A VA employee who suspects a violation of the Anti-kickback Act must report the suspected violation to OGC for review.

803.570 Commercial advertising.

803.570–1 Policy.

It is VA policy that contractors will not advertise the award of contracts or refer to VA contracts in contractors' commercial advertising in such a manner as to state or imply that VA endorses a product, project, or commercial line of endeavor. The intent of this policy is to preclude the appearance of bias toward any product or service.

803.570–2 Contract clause.

The contracting officer must insert the clause at 852.203–70, Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.

Subpart 803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

803.602 Exceptions.

The authority to authorize an exception to the policy in FAR 3.601 is delegated to the SPE and is further delegated to the DSPE.

Subpart 803.7—Voiding and Rescinding Contracts

803.703 Authority.

The authority to make determinations under FAR Subpart 3.7, Voiding and Rescinding Contracts, is delegated to the SPE and is further delegated to the DSPE.

803.705 Procedures.

In making a determination to void or rescind a contract, the DSPE must follow the procedures of FAR 3.705 and the following:

(a) Upon receipt of an allegation or evidence of situations meeting the provisions of FAR 3.700, the DSPE shall refer the matter to the D & S Committee to conduct a finding of facts. Upon completion of the fact-finding, the D & S Committee shall present the facts and recommendations for further action to the DSPE.

(b) If the DSPE finds a basis for further action, the D & S Committee shall prepare a notice under FAR 3.705 for signature of the DSPE. If suspension or debarment is being considered, the D & S Committee shall also follow the procedures of 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or registered agent, by certified mail, return receipt requested. In the case of a business, the D & S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.

(c) If VA does not receive a reply from the contractor within 30 calendar days of receipt of the notice by the addressee, the D & S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.705.

(d) If VA receives a reply from the contractor within 30 calendar days of receipt of the notice, the D & S Committee must consider the information in the reply before the D & S Committee makes its recommendation to the DSPE.

(e) The D & S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D & S Committee, in person or through a representative, to present information or argument. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D & S Committee shall prepare a report of the presentation for submission to the DSPE.

(f) If the D & S Committee finds that the contractor's submission in opposition to further action under FAR 3.705 raises a genuine dispute over facts material to the action, then the D & S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to the VA Board of Contract Appeals for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor.

Subpart 803.8—Limitation on the Payment of Funds To Influence Federal Transactions

803.804 Policy.

A contracting officer must forward a copy of all contractor disclosures furnished under the clause at FAR 52.203–12, Limitations on Payments to Influence Certain Federal Transactions, to the Director, Acquisition Resources Service, for subsequent submission by the Secretary to Congress.

803.806 Processing suspected violations.

A VA employee must report suspected violations of 31 U.S.C. 1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the Assistant Secretary for Management and the VA Office of Inspector General.

Subpart 803.70—Contractor Responsibility To Avoid Improper Business Practices

803.7000 Display of the VA Hotline poster.

(a) Under the circumstances described in paragraph (b) of this section, a contractor must display prominently a VA Hotline poster prepared by the VA Office of Inspector General in a common work area within a business segment performing work under a VA contract.

(b) A contractor must comply with paragraph (a) of this section when all of the following apply:

(1) The contractor is awarded a VA contract for $500,000 or more for supplies or services, or $3 million or more for construction.

(2) The contractor has not established an internal reporting mechanism and program, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

803.7001 Contract clause.

The contracting officer must insert the clause at 852.203–71, Display of Department of Veterans Affairs Hotline Poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7000.

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1—Contract Execution

Sec.

804.101 Contracting officer's signature.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 804.1—Contract Execution

804.101 Contracting officer's signature.

(a) If a contracting officer's name and title has been typed, stamped, or printed on the contract, and that contracting officer is not available to sign the contract, another contracting officer, as specified in 801.602, may sign the contract.

(b) The contracting officer who signs the contract must have contracting authority to cover the contract to be

signed and must annotate his or her name and title below his or her signature.

Subchapter B—Competition and Acquisition Planning

PART 805—PUBLICIZING CONTRACT ACTIONS

Subpart 805.2—Synopses of Proposed Contract Actions

Sec.
805.202 Exceptions.
805.205 Special situations.
805.207 Preparation and transmittal of synopses.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 805.2—Synopses of Proposed Contract Actions

805.202 Exceptions.

In accordance with FAR 5.202, the contract actions in 806.302–5 do not require synopsizing.

805.205 Special situations.

(a) A contracting officer may procure paid advertising in a daily newspaper circulated in the local area to publicize a proposed procurement of A/E services not expected to exceed $10,000. See FAR 5.101(b)(4)(i) and 5.502(a).

(b) A contracting officer may procure paid advertising in a daily newspaper circulated in the local area or in professional journals to publicize a proposed procurement of professional services (e.g., scarce medical specialist services, health-care resources, advisory and assistance services). See FAR 5.101(b)(4)(i) and 5.502(a).

805.207 Preparation and transmittal of synopses.

(a) When an A/E evaluation board is ready to advertise for A/E services, the board must establish the geographic area within which it will consider A/E firms (including joint ventures).

(b) The geographic area must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

PART 806—COMPETITION REQUIREMENTS

Subpart 806.3—Other Than Full and Open Competition

Sec.
806.302 Circumstances permitting other than full and open competition.
806.302–5 Authorized or required by statute.
806.302–7 Public interest.
806.304 Approval of the justification.

Subpart 806.5—Competition Advocates

806.501 Requirement.
806.570 Planning requirements.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302–5 Authorized or required by statute.

(a) Full and open competition need not be provided for when awarding:

(1) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302. (38 U.S.C. 7409)

(2) Contracts for health-care resources negotiated under the authority of 38 U.S.C. 8153, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and 806.304 do not apply to such contracts or agreements. (38 U.S.C. 8153)

(3) Contracts for health-care resources, negotiated under the authority of 38 U.S.C. 8153, that are not acquired under the authority of paragraph (a)(2) of this section, but only when the procurement is conducted in accordance with Part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts and agreements conducted on a sole-source basis. (38 U.S.C. 8153)

(b) Various sections of title 38 U.S.C. authorize the Secretary to enter into certain contracts and certain types of contracts without regard to any other provisions of law. When the contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 253(c)(5) and the following authorities:

(1) For, contracts for orthopedic and prosthetic appliances and related services including research, cite 38 U.S.C. 8123. (38 U.S.C. 8123)

(2) For contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service, cite 38 U.S.C. 7802. (38 U.S.C. 7802)

(3) For contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee, cite 38 U.S.C. 8109(f). (38 U.S.C. 8109)

(4) For contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources, cite 38 U.S.C. 8122(c). (38 U.S.C. 8122)

(5) For contracts or agreements with public or private agencies for services of translators, cite 38 U.S.C. 513. (38 U.S.C. 513)

(6) For contracts for nursing home care, cite 38 U.S.C. 1720. (38 U.S.C. 1720)

(c) Except for an acquisition under paragraph (a)(2) of this section, the contracting officer must provide a justification under FAR 6.303 and obtain an approval under 806.304 for each acquisition described in this section.

806.302–7 Public interest.

(a) When the contracting officer uses 41 U.S.C. 253(c)(7) to support a contract award using other than full and open competition, the contracting officer must prepare a Determination and Finding (D&F) under FAR 1.7 and a justification under FAR 6.303. The D&F must be signed by the Secretary.

(b) The contracting officer must submit the D&F and justification through the HCA to the Agency Competition Advocate for signature by the Secretary. The submission must include the date the contracting officer expects to award the contract.

(c) VA must notify Congress 30 days before the expected award date. The Agency Competition Advocate is responsible for preparing this notice. The contracting officer may not award the contract until notified by the Agency Competition Advocate.

806.304 Approval of the justification.

(a) For a justification other than a class justification specified in FAR 6.304(c), Table 806.304–1 provides the authorities who may approve a justification:

TABLE 806.304.1

Proposed contract amount	Approving authority	Alternate approving authority
(1) Not exceeding $500,000	The contracting officer, as provided in FAR 6.304(a)(1).	Not applicable.
(2) Over $500,000 but not exceeding $10 million.	Contracting Activity Competition Advocate (see 806.501(b) and (c)) unless that Advocate is the contracting officer.	The Agency Competition Advocate (see 806.501(a)).
(3) Over $10 million but not exceeding $50 million.	Agency Competition Advocate	Not applicable.
(4) Over $50 million	Senior Procurement Executive (see 802.100)	Not applicable.

(b) For class justifications specified in FAR 6.304(c), the contracting officer must obtain the approval of the Agency Competition Advocate for all proposed justifications with an estimated value of up to $50 million. The contracting officer must obtain the approval of the SPE for all proposed justifications with an estimated value of more than $50 million.

Subpart 806.5—Competition Advocates

806.501 Requirement.

(a) The Associate Deputy Assistant Secretary for Acquisitions is the Agency Competition Advocate. The Agency Competition Advocate may further delegate authority to other VA officials in VA Administrations and staff offices.

(b) The Executive Director and Chief Operating Officer, National Acquisition Center, is the Contracting Activity Competition Advocate for the Center.

(c) Each HCA (see Subpart 802.1) will serve as the Contracting Activity Competition Advocate in all other cases.

(d) The authority in paragraphs (b) and (c) of this section is not delegable.

806.570 Planning requirements.

(a) Each Contracting Activity Competition Advocate must do the following:

(1) Develop a Competition Plan.

(2) Incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located.

(3) Obtain the endorsement and support of top level management.

(4) Ensure that the services and offices that the contracting activity supports understand the plan.

(b) At a minimum, the Competition Plan must include the following:

(1) Approval requirements for other than full and open competition specified in FAR 6.304.

(2) A description of the synopsis requirements in FAR Subpart 5.2 to ensure that responsible staff fully understand the advance procurement planning that is required.

(3) A description of how to integrate the Competition Plan into advance procurement planning.

(4) A listing of obstacles to competition and a proposal for overcoming them.

(5) A method for increasing cost competition for contracts and competition on other significant factors.

PART 807—ACQUISITION PLANNING

Subpart 807.1—Acquisition Plans

Sec.

807.103 Agency-head responsibilities.

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

807.304–77 Right of first refusal.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 807.1—Acquisition Plans

807.103 Agency-head responsibilities.

The authority to prescribe procedures in FAR 7.103 is delegated to the SPE and is further delegated to the DSPE.

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes the use of VAAR clause at 852.207–70, Report of Employment Under Commercial Activities, when contracting for commercial services under Office of Management and Budget (OMB) Circular A–76 or VA's cost comparison process. The cost comparison process is used by VA to determine whether to use commercial or Government resources to provide commercial services.

807.304–77 Right of first refusal.

(a) In addition to the Right of First Refusal of Employment clause specified in FAR 52.207–3, the contracting officer must include the clause "Report of Employment Under Commercial Activities" at 852.207–70 in all cost comparison solicitations where VA personnel may be displaced. This clause is primarily intended to verify that the contractor is meeting its obligation to provide Federal workers who are adversely affected by the contract award and who are qualified for the jobs the first opportunity for employment openings created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. To implement the clause, the contracting officer (or COTR) must first obtain a list of Federal personnel who will be adversely affected as a result of the anticipated contract from the servicing Human Resources Service office. The list should be requested as soon as a preliminary determination is made to contract out a function subject to OMB Circular A–76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.002 Priorities for use of Government supply sources.

Subpart 808.4—Federal Supply Schedules

808.402 General.

Subpart 808.8—Acquisition of Printing and Related Supplies

808.802 Policy.

Authority: 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

808.002 Priorities for use of Government supply sources.

(a) *Supplies.* (1) As used in FAR 8.002(a)(1)(i), the term "agency inventories" includes Supply Fund Stock and VA Excess.

(2) A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR 8.002(a)(1)(v)) and mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)).

(3) Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66 shall be mandatory for use by VA and shall have the same order of priority as mandatory Federal Supply Schedules

(FAR 8.002(a)(1)(vi)). VA contracting officers must place orders against Federal Supply Schedules contracts awarded by the VA National Acquisition Center in FSC Groups 65 and 66 in the following descending order of priority:

(i) Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

(ii) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

(iii) Federal Supply Schedules without BPAs.

(4) Indefinite delivery indefinite quantity (IDIQ) contracts, awarded by VISN, regional, or local facility VA contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts shall have an order of priority between optional use Federal Supply Schedules (FAR 8.002(1)(a)(vii)) and commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)). VA contracting officers must place delivery orders against IDIQ contracts, awarded by VISN, regional, or a local facility contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts in the following descending order of priority:

(i) VISN or regionally awarded contracts.

(ii) Locally awarded contracts.

(5) Open market purchases (purchases not falling within any of the higher priorities in paragraphs (a)(2) through (4) of this section) have the same priority as commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)).

(b) *Unusual or compelling urgency.* The contracting officer may use a source lower in priority than as specified in paragraph (a) when the need for supplies or services is of an unusual or compelling urgency (see FAR 6.302–2). The Contracting Officer must include a justification for each deviation in the procurement file.

(c) *Eligible Beneficiaries.* (1) A contracting Officer may authorize an acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

(2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase from a commercial source of dress shoes similar to Federal Prison Industries, Inc., Style No. 86–A.

Subpart 808.4—Federal Supply Schedules

808.402 General.

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards, administers, and issues the Federal Supply Schedules for Federal Supply Classification Groups 65 and 89 and for cost-per-test services under Group 66.

Subpart 808.8—Acquisition of Printing and Related Supplies

808.802 Policy.

The Director, Publications Staff, Office of Acquisition and Materiel Management, VA Central Office, is the Central Printing Authority for VA (see FAR 8.802(b)).

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

Sec.
809.104 Standards.
809.104–2 Special standards.
809.106 Preaward surveys.
809.106–1 Conditions for preaward surveys.

Subpart 809.2—Qualifications Requirements

809.201 Definitions.
809.202 Policy.
809.204 Responsibilities for establishment of a qualification requirement.
809.206 Acquisitions subject to qualification requirements.
809.206–1 General.
809.270 Qualified products for convenience/labor-saving foods.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.
809.402 Policy.
809.404 Excluded Parties List System.
809.405 Effect of listing.
809.405–1 Continuation of current contracts.
809.405–2 Restrictions on subcontracting.
809.406 Debarment.
809.406–1 General.
809.406.3 Procedures.
809.406–4 Period of debarment.
809.407 Suspension.
809.407–1 General.
809.407–3 Procedures.
809.470 Fact-finding procedures.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.503 Waiver.
809.504 Contracting officer responsibilities.
809.507 Solicitation provisions and contract clause.
809.507–1 Solicitation provisions.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 809.1—Responsible Prospective Contractors

809.104 Standards.

809.104–2 Special standards.

(a) For a pre-award survey prescribed by 809.106–1, a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by 809.106–1(a).

(b) An appropriate specialist will assist the contracting officer in developing the special standards under paragraph (a) of this section.

809.106 Pre-award surveys.

809.106–1 Conditions for pre-award surveys.

(a) Except as provided in paragraphs (b) through (e) of this section, a committee under the direction of the contracting officer and composed of representatives of the medical service or using service chiefs or designees appointed by the facility or VISN director will conduct a pre-award on-site evaluation of the plant, personnel, equipment and processes of the prospective contractor for contracts covering the products and services of the following:

(1) Bakeries.

(2) Dairies.

(3) Ice cream plants.

(4) Laundry and dry cleaning activities.

(b) Before any inspection, the contracting officer will determine whether another VA facility or another Federal agency has recently inspected and approved the plant.

(1) The contracting officer will accept an approved inspection report of another VA facility.

(2) If another Federal agency made a plant inspection not more than 6 months before the proposed VA contract period, the contracting officer may accept an approved inspection report of that other Federal agency as satisfactory evidence that the facilities of the bidder meet the bid requirements.

(c) VA will not conduct a pre-award on-site evaluation of a dairy plant when VA receives an acceptable bid from a supplier of dairy products designated as No.1 in the Federal Specifications if the following conditions are met:

(1) The supplier has received a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code.

(2) The rating is current (not over 2 years old) and has been determined by a certified State milk sanitation rating officer in the State of origin or by the Public Health Service. The contractor must maintain the rating of 90 percent or more during the period of the contract.

(3) The solicitation specifications must include the requirements in paragraphs (c)(1) and (2) of this section.

(d) A dairy plant that does not meet paragraph (c) of this section may offer only dairy products designated as No. 2 in the Federal Specifications. VA will make an award to such a firm only after it completes a pre-award on-site evaluation conducted under paragraph (a) of this section.

(e) Before it makes an open market purchase of fresh bakery products (such as pies, cakes, and cookies), VA will inspect and evaluate the plant where these products are produced or prepared under paragraph (a) of this section. VA will make an on-site evaluation at least annually and record the results on VA Form 10–2079, Inspection Report of Bakery.

Subpart 809.2—Qualifications Requirements

809.201 Definitions.

For the purposes of this subpart:

VA QPL means a VA Qualified Products List, a list of products qualified by the VA under VA specifications, or purchase descriptions, or commercial item descriptions.

VISN QPL means a VISN Qualified Products List, a list of products qualified by a VISN under VA specifications, or purchase descriptions, or commercial item descriptions.

809.202 Policy.

The HCA may sign a justification required by FAR 9.202(a)(1).

809.204 Responsibilities for establishment of a qualification requirement.

(a) Under FAR Subpart 9.2, VA may create VA QPLs for use on individual solicitations or on multiple solicitations issued by one or more VA facilities.

(b) An HCA or designee must support the creation of a VA QPL using one or more of the following justifications:

(1) The time required for testing the product after award would unduly delay product delivery.

(2) The cost of repetitive product testing would be excessive.

(3) Testing the product would require purchasing an expensive or complicated apparatus not commonly available.

(4) It is in the Government's interest to be assured before contract award that the product is satisfactory for its intended use.

(5) Determining acceptability would require providing product performance data to supplement technical requirements in the specification.

(6) Conducting a test would result in substantial or repetitive rejections.

(7) VA cannot economically develop clear, professional specifications for the product performance, balance, design, or construction, and professional judgment is required to determine whether the product is acceptable under VA requirements.

(c) If VA plans to establish a VA QPL for any given product, the contracting officer may limit known suppliers to suppliers whose products are covered by a Federal Supply Schedule contract, as provided at FAR Subpart 8.4.

(d) VA will pay the costs to inspect and test a product sample submitted under this section.

(1) The product supplier must pay for the sample and its transportation to the place of inspecting and testing.

(2) After inspection and testing, VA will return any product sample to the supplier "as is" unless:

(i) The inspection or test destroys the sample; or

(ii) The supplier authorizes VA to retain or dispose of the sample.

(e) Once VA accepts a product for the VA QPL, VA may review the product for compliance with the applicable specification at any time.

(1) Where there is a variance between a VA specification that was the basis for the VA QPL and the product furnished by the supplier, the supplier must furnish an item that conforms to the VA specification.

(2) If the supplier fails to or is unable to provide a product that conforms to the applicable VA specification, the product will be removed from the VA QPL.

(f) VA's acceptance of a product for listing on the VA QPL does not:

(1) Guarantee that VA will accept the product in any future purchase; or

(2) Constitute a waiver of the specifications as to acceptance, inspection, testing, or other provisions of any future contract involving the product.

809.206 Acquisitions subject to qualification requirements.

809.206–1 General.

The HCA may determine that an emergency exists, as provided in FAR 9.206–1(b).

809.270 Qualified products for convenience/labor-saving foods.

(a) Each VISN Nutrition and Food Service representative is authorized to establish a common VISN QPL for convenience and labor-saving foods for use at medical facilities within the representative's VISN.

(1) The VISN Nutrition and Food Service representative must notify the Director, Nutrition and Food Service, VA Central Office, of the establishment or amendment of any VISN QPL.

(2) To avoid unnecessary duplication within a VISN, for medical facilities using an applicable VISN QPL under paragraph (b) of this section, the VISN Nutrition and Food Service representative must coordinate and consolidate test results and recommendations.

(b) Each medical facility may:

(1) Use its VISN QPL; and

(2) Test food of its choice, provided that the facility submits test results to the VISN Nutrition and Food Service representative.

(c) The VISN representative must provide a copy of each approved VISN QPL to the following:

(1) Each contracting office in the VISN.

(2) The Director, Nutrition and Food Service, VA Central office.

(3) Upon request, the Office of Acquisition and Materiel Management, VA Central Office.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart supplements provisions of the FAR concerning procedures and related actions for the debarment and suspension of contractors.

809.402 Policy.

(a) When VA receives information that another agency is pursuing a debarment or suspension identical to a VA action against the same contractor, the Debarment and Suspension (D & S) Committee will coordinate prospective action with the appropriate official of the other agency to establish a lead agency.

(b) The D&S Committee will provide the designated lead agency with any information relevant to the action for consideration in the decision-making process.

(c) The D&S Committee will maintain close coordination with the appropriate official through the completion a final debarment or suspension decision.

809.404 Excluded Parties List System.

Acquisition Resources Service, Office of Acquisition and Materiel Management, is responsible for the actions described in FAR 9.404(c).

809.405 Effect of listing.

The authority under FAR 9.405(a), 9.405(d)(2), and 9.405(d)(3) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors whose names appear on the Excluded Parties List System is delegated to the SPE and is further delegated to the DSPE.

809.405–1 Continuation of current contracts.

Authority to make the determinations under FAR 9.405–1 is delegated to the SPE and is further delegated to the DSPE.

809.405–2 Restrictions on subcontracting.

When a subcontract is subject to Government consent, authority to make the written determination required under FAR 9.405–2 consenting to a contractor's use of a subcontractor who is debarred, suspended, or proposed for debarment is delegated to the SPE and is further delegated to the DSPE.

809.406 Debarment.

809.406–1 General.

(a) As provided in FAR 9.406–1(c), authority to determine whether to continue business dealings between VA and a contractor debarred or proposed for debarment is delegated to the SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.406–1, the DSPE is the debarring official under the Federal Management Regulation at 41 CFR 102–117.295.

(c) Additional factors that a debarring official should consider before arriving at a debarment decision include the following:

(1) Whether the contractor had a mechanism, such as a hotline, by which employees could have reported suspected instances of improper conduct, and instructions in place that encouraged employees to make such reports.

(2) Whether the contractor conducted periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting.

(3) Whether the contractor conducted internal and external audits as appropriate.

(4) Whether the contractor timely reported to appropriate Government officials any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts.

809.406–3 Procedures.

(a) Any individual may submit a recommendation to debar a contractor to the DSPE. The recommendation to debar must be supported with evidence of a cause for debarment listed in FAR 9.406–2. When the DSPE receives a recommendation for debarment, he or she will refer the matter to the D & S Committee. If the reporting individual is a VA employee and the recommendation to debar is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D & S Committee finds evidence of a cause for debarment, as listed in FAR 9.406–2, with or without a recommendation, it will conduct a fact-finding and present facts to the debarring official.

(c) If the debarring official finds a basis for proposing a contractor for debarment, the D & S Committee will prepare a notice of proposed debarment under FAR 9.406–3(c) for the signature of the debarring official. The signed notice of proposed debarment will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D & S Committee may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The D & S Committee concurrently must post notice of proposed debarment to the General Services Administration Excluded Parties List System pending a debarment decision.

(d) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D & S Committee will prepare a recommendation and refer the case to the debarring official for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D & S Committee must consider the information in the reply before the D & S Committee makes its recommendation to the debarring official.

(f) The D & S Committee, upon the request of the contractor proposed for debarment, must, as soon as practicable, allow the contractor an opportunity to appear before the D & S Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D & S Committee shall prepare a report of the proceeding for the debarring official.

(g) If the D & S Committee finds that the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, then the D & S Committee shall submit to the debarring official the information establishing the dispute of material facts. If the debarring official agrees that there is a genuine dispute of material facts, the debarring official shall refer the dispute to the VA Board of Contract Appeals for resolution pursuant to 809.470.

(h) If there are no disputes over material facts, the debarment action is based on a conviction or civil judgment, or all disputes over material facts have been resolved pursuant to 809.470, the debarring official will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The D & S Committee must update the status of the action on the General Services Administration Excluded Parties List System.

809.406–4 Period of debarment.

(a) Except in an unusual circumstance, the period of debarment will not exceed three years. The debarring official will base the period of debarment on the circumstances surrounding the cause for debarment.

(b) The DSPE may remove a debarment, amend its scope, or reduce the period of debarment based on a D & S Committee recommendation if:

(1) VA has debarred the contractor;

(2) The action is indicated after the DSPE reviews documentary evidence submitted by or on behalf of the contractor setting forth the appropriate grounds for granting relief. Appropriate grounds include newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, elimination of the cause for which debarment was imposed, or any other appropriate grounds.

809.407 Suspension.

809.407–1 General.

(a) As provided in FAR 9.407–1(d), authority to determine whether to continue business dealings between VA and a suspended contractor is delegated

to the SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.407–1, the DSPE is the suspending official under the Federal Management Regulation at 41 CFR 102–117.295.

809.407–3 Procedures.

(a) Any individual may submit a recommendation to suspend a contractor to the DSPE. The recommendation to suspend must be supported with evidence of a cause for suspension listed in FAR 9.407–2. When the DSPE receives a recommendation for suspension, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to suspend is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for suspension, as listed in FAR 9.407–2, with or without a recommendation, it will conduct a fact-finding and present facts and recommendations to the suspending official.

(c) If the suspending official finds a basis for suspending a contractor, the D&S Committee will prepare a notice of suspension under FAR 9.407–3(c) for the signature of the suspending official. The signed notice of suspension will be sent to the last know address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of suspension to the General Services Administration Excluded Parties List System pending completion of investigation and any ensuing legal proceedings.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice of suspension, the D&S Committee must consider the information in the reply before the Committee makes further recommendations to the suspending official. The D&S Committee, upon the request of a suspended contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the proceeding for the suspending official.

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the suspending official agrees that there is a genuine dispute of material facts, the suspending official shall refer the dispute to the VA Board of Contract Appeals for resolution pursuant to 809.470.

809.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of fact pursuant to 809.406–3 and 809.407–3 of this chapter. The Chair of the VA Board of Contract Appeals shall appoint a member of the Board to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The hearings shall be conducted in Washington, DC, unless the appointed member of the VA Board of Contract Appeals determines otherwise. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute to the Board.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative at the fact-finding hearing. The contractor may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence. As required by FAR 9.406–3(d)(2)(i) and 9.407–3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the Government's representative, and the contractor.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

809.504 Contracting officer responsibilities.

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organization conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award, the contracting officer may disqualify the offeror from award under FAR 9.504(e).

(c) Even if awarding a contract will result in an organizational conflict of interest, the contracting officer may request a waiver from his or her HCA if awarding the contract is in the best interests of the Government.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of OGC.

(2) If the HCA grants a waiver request, the contracting officer may set contract

terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.

(d) In any solicitation for the services addressed at FAR 9.502, the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see 809.507–1(b) and 852.209–70).

809.507 Solicitation provisions and contract clause.

809.507–1 Solicitation provisions.

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer must insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507–1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The clause at 852.209–70, Organizational Conflicts of Interest, must be included in any solicitation for the services addressed in FAR 9.502.

PART 811—DESCRIBING AGENCY NEEDS

Sec.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

811.001 Definitions.

For the purposes of this part:

Brand name product means a commercial product described by brand name and make or model number or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor.

Salient characteristics means those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are features that are identified in the specifications as a mandatory requirement that a proposed "equal" product or material must possess for the bid to be considered responsive.

Subpart 811.1—Selecting and Developing Requirements Documents

811.103 Market acceptance.

811.103–70 Technical industry standards.

Where items are required to conform to technical industry standards, such as those adopted by: Underwriters Laboratories, Inc.; Factory Mutual Laboratories; American Gas Association; American Society of Mechanical Engineers; National Electrical Manufacturers Association; American Society of Heating, Refrigerating and Air-Conditioning Engineers; or similar organizations, where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal, or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The contracting officer shall include the provision at 852.211–72, Technical Industry Standards, in solicitations requiring conformance to technical industry standards unless comparable provisions are contained in the item specification.

811.104 Use of brand name or equal purchase descriptions.

811.104–70 Brand name or equal purchase descriptions.

(a) The specification writer may use purchase descriptions that contain references to one or more brand name products only in accordance with 811.104–71 through 811.104–75.

(b) Purchase descriptions that contain references to one or more brand name products must be followed by the words "or equal," except when the acquisition of a specific brand name is fully justified under FAR Subpart 6.3 and 806.3. If more than one brand name is acceptable, the contracting officer should list the known acceptable brand name products in the solicitation.

(c) Where a "brand name or equal" purchase description is used, the contracting officer must give bidders an opportunity to offer products other than those specifically referenced by brand name. Following bid opening or receipt of offers, the contracting officer must determine if non "brand name" substitute products fully meet the salient characteristics listed in the solicitation.

(d) When using a "brand name or equal" purchase description, the specification writer must set forth those salient physical, functional, or other characteristics of the referenced products that are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, the specification writer must specify this requirement. The purchase description must contain the following information to the extent available:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand name product referenced and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(4) Any other information necessary to describe the item required.

(e) When necessary to adequately describe the item required, the contracting officer may use an applicable commercial catalog description or pertinent extract if the description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer must insure that a copy of any catalog referenced (except a parts catalog) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (d) of this section, the specification writer must not include in a purchase description either minimum or maximum restrictive dimensions, weights, materials, or other salient characteristics that are unique to a

brand name product or that would tend to eliminate competition or other products that are only marginally outside the restrictions. However, the specification writer may include in a purchase description restrictive dimensions, weights, materials, or other salient characteristic if:

(1) The user determines in writing that the restrictions are essential to the Government's requirements;

(2) The specification writer includes the brand name of the product in the purchase description; and,

(3) The contracting officer makes all other determinations required by 811.105.

(g) The contracting officer must include in the contract file, as appropriate, written justifications for using the "brand name or equal" description, the contracting officer's determinations, and bidder submissions.

811.104–71 Purchase description clauses.

(a) When a solicitation uses "brand name or equal" purchase descriptions, the contracting officer must include in the solicitation the clause at 852.211–73, Brand Name or Equal, and the provision set forth at FAR 52.214–21, Descriptive Literature. The contracting officer must review the requirements at FAR 14.202–5 when using the descriptive literature provision.

(b) When a "brand name or equal" purchase description is included in an invitation for bids, the contracting officer must insert the following after each item so described in the solicitation, for completion by the bidder:

Bidding on: _____

Manufacturer name _____

Brand _____

No. _____

811.104–72 Limited application of brand name or equal.

If the contracting officer determines that the clause at 852.211–73, Brand Name or Equal, applies to only certain line items of a solicitation, the requirements of 811.104–71(b) apply to those line items and the contracting officer must include a statement in the solicitation as follows:

The clause entitled "Brand Name or Equal" applies only to the following line items: [List the line items to which the clause applies]

811.104–73 Bid samples.

(a) When a solicitation contains "brand name or equal" purchase descriptions, the contracting officer must not require a bidder who offers brand name products, including component parts, referenced in the descriptions to furnish bid samples of the referenced brand name products.

(b) A solicitation may require the submission of bid samples in the case of a bidder offering "or equal" products. If bid samples are required, the contracting officer must include in the solicitation the provision set forth at FAR 52.214–20, Bid Samples.

(c) A bidder must furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name or Equal" clause, 852.211–73(c)(1) and (c)(2), even though bid samples may not be required.

811.104–74 Bid evaluation and award.

(a) A bid offering products that differ from brand name products referenced in a "brand name or equal" purchase description must be considered for award if the contracting officer determines in accordance with the terms of the clause at 852.211–73, Brand Name or Equal, that the offered products are clearly identified in the bid and are equal in all material respects to the products specified.

(b) In award documents, the contracting officer must include, or incorporate by reference, an identification of the specific products that the contractor is to furnish. The identification must include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. This requirement also applies when the descriptions of the end items contain "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211–73, Brand Name or Equal, was applied to the component parts or accessories (see 811.104–72).

811.104–75 Procedure for negotiated procurements.

(a) The specification writer and contracting officer must use the policies and procedures prescribed in 811.104–70 through 811.104–74 as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The contracting officer may adapt the clause at 852.211–73, Brand Name or Equal, for use in negotiated procurements. When use of the clause is not practical (as may be the case in unusual and compelling urgency purchases), the contracting officer must inform suppliers that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products are equal in all material respects to the products referenced. The contracting officer must place decisions under this paragraph in writing for the contract file, as appropriate.

811.105 Items peculiar to one manufacturer.

(a) Except as provided in paragraph (b) of this section, the specification writer must write specifications in accordance with FAR 11.002.

(b)(1) When the specification writer determines that a particular physical or functional characteristic of only one product will meet the minimum requirements of VA (see FAR 11.105) or that a "brand name or equal" purchase description must be used (see FAR 11.104), the specification writer must identify the item(s) for the contracting officer and do one of the following:

(i) Provide a full written justification of the reason the particular characteristic is essential to the Government's requirements.

(ii) Explain why the "brand name or equal" purchase description is necessary.

(2) The contracting officer makes the final determination whether restrictive specifications or "brand name or equal" purchase descriptions will be included in the solicitation.

811.107 Contract clauses.

(a) Insert the clause at 852.211–70, Service Data Manuals, paragraph (a), in solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility unless the facility Chief, Engineering Service, indicates that the service data manuals are not needed. The purpose of the clause is to require the manufacturer to provide VA a manual or groups of manuals that will allow for the in-house repair of the equipment purchased.

(b) Insert the clause at 852.211–70, Service Data Manuals, paragraph (b), in solicitations and requests for proposals for mechanical equipment (other than technical medical and other technical equipment and devices) issued by a field station.

Subpart 811.2—Using and Maintaining Requirements Documents

811.202 Maintenance of standardization documents.

(a) *Military and departmental specifications.* Contracting officers may, when it is advantageous to VA, use these specifications when procuring supplies and equipment costing less than the simplified acquisition threshold. When purchasing items of perishable subsistence, contracting officers may take into account only

those exemptions set forth in paragraphs (b)(2) and (b)(3) of this section.

(b) *Nutrition and Food Service specifications.* (1) VA has adopted for use in the procurement of packinghouse products the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS) and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for VA use, are contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900–SL.

(2) The military specifications for meat and meat products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, must be used by VA only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, may be used when purchasing either from DLA or from local dealers.

(3) Except as authorized in Part 846, a contracting officer must not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval from the DSPE.

(4) Items of meat, cured pork and poultry purchased under the Subsistence Prime Vendor national contract or other local procurement sources should be purchased via Commercial Item Descriptions (CID) that require all products meet USDA Grading standards and/or the IMPS as applicable.

(c) *Department of Veterans Affairs specifications.* (1) The Director, Publications Staff, is responsible for developing, publishing, and distributing VA specifications covering printing and binding.

(2) VA specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. The contracting officer may requisition facility requirements for these specifications from that source.

(d) *Government paper specification standards.* (1) Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating, must require that the paper stocks be in accordance with the Government Paper Specification Standards issued by the Congressional Joint Committee on Printing.

(2) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases, and boxes must be procured in accordance with Government Printing Office (GPO) specifications and must be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources.

(3) There are three types of binding/rebinding: Class A (hard cover); Perfect (glued); and Lumbinding (sewn). The most suitable type of binding must be procured to satisfy the requirements, based upon the intended use of the bound material.

811.204 Contract clause.

Insert the clause at 852.211–75, Product Specifications, when product specifications are cited in an invitation for bids or a request for proposals.

Subpart 811.4—Delivery or Performance Schedules

811.404 Contract clause.

When delivery is required by or on a particular date for f.o.b. destination contracts, the contracting officer must add a statement following the Time of Delivery clause in FAR 52.211–8 that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the contracting officer must add a statement following this clause that the date specified is the date shipment is to be accepted by the carrier.

Subpart 811.5—Liquidated Damages

811.501 Policy.

The contracting officer must not routinely include a liquidated damages provision in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions must conform to the criteria in FAR 11.501. In making this decision, the contracting officer must consider whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. The contracting officer must not use a liquidated damages provision for any of the following reasons:

(a) As insurance against selection of a non-responsible bidder.

(b) As a substitute for efficient contract administration.

(c) As a penalty for failure to perform on time.

811.503 Contract clause.

When the contracting officer determines that the Liquidated Damages clause prescribed in FAR 52.211–11 or 52.211–12 must be used and where partial performance by the contractor may be to the advantage of the Government, the contracting officer must include the clause in 852.211–74, Liquidated Damages, in the contract.

Subpart 811.6—Priorities and Allocations

811.602 General.

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, priorities and allocations of critical materials are restricted to projects having a direct connection with supporting current defense needs. VA is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) When it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist the VA in obtaining critical materials for maintenance and repair projects. The Department of Commerce will also, when possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) A contracting officer having problems acquiring critical materials must ascertain all the facts necessary to enable the Department of Commerce to render assistance to VA in acquiring these materials. The contracting officer must submit a request for assistance to the DSPE containing the following information:

(1) A description of the maintenance and repair project or the new item.

(2) The critical material and the amount required.

(3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

(4) The VA contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.

(6) The additional time the contractor claims is necessary to deliver the

materials if priority assistance is not provided.

(7) The nature and extent of the emergency that will be generated at the station, such as any of the following:

(i) Damage to the physical plant.

(ii) Impairment of the patient care program.

(iii) Creation of safety hazards.

(iv) Any other pertinent condition that could result because of failure to secure assistance in obtaining the critical materials.

(8) If applicable, a statement that the item required is for use in a construction contract that was authorized by the Chief Facilities Management Officer, Office of Facilities Management, to be awarded and administered by the facility contracting officer.

PART 812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 812.1—Acquisition of Commercial Items—General

Sec.
812.102 Applicability.

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 812.1—Acquisition of Commercial Items—General

812.102 Applicability.

(a) This part shall be used for the acquisition of supplies and services that meet the definition of commercial items at FAR 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for the solicitation, evaluation, and award prescribed in Parts 813, Simplified Acquisition Procedures, 814, Sealed Bidding, and 815, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies of other parts of this chapter. When a policy in another part of this chapter differs from a policy in this part, this Part 812 applies to the acquisition of commercial items.

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) Regardless of provisions in other parts of the VAAR, contracting officers must use only those provisions and clauses in this part when acquiring commercial items.

(b) Contracting officers may use the provisions and clauses in the following VAAR sections, as appropriate, in requests for quotations, solicitations, and contracts:

(1) 852.203–70, Commercial advertising.

(2) 852.203–71, Display of Department of Veterans Affairs hotline poster.

(3) 852.207–70, Report of employment under commercial activities.

(4) 852.209–70, Organizational conflicts of interest.

(5) 852.211–71, Special notice.

(6) 852.211–72, Technical industry standards.

(7) 852.211–73, Brand name or equal.

(8) 852.211–75, Product specifications.

(9) 852.214–70, Caution to bidders—bid envelopes.

(10) 852.214–71, Restrictions on alternate item(s).

(11) 852.214–72, Alternate item(s).

(12) 852.214–73, Alternate packaging and packing.

(13) 852.214–74, Bid samples.

(14) 852.216–70, Estimated quantities.

(15) 852.228–71, Indemnification and insurance.

(16) 852.229–70, Sales and use taxes.

(17) 852.233–70, Protest Content/Alternative Disputes Resolution.

(18) 852.233–71, Alternate Protest Procedure.

(19) 852.237–7, Indemnification and Medical Liability Insurance.

(20) 852.237–70, Contractor responsibilities.

(21) 852.246–70, Guarantee.

(22) 852.246–71, Inspection.

(23) 852.246–72, Frozen processed foods.

(24) 852.252–70, Solicitation provisions or clauses incorporated by reference.

(25) 852.270–1, Representatives of contracting officers.

(26) 852.270–2, Bread and bakery products—quantities.

(27) 852.270–3, Purchase of shellfish.

(28) 852.271–72, Time spent by counselee in counseling process.

(29) 852.271–73, Use and publication of counseling results.

(30) 852.271–74, Inspection.

(31) 852.271–75, Extension of contract period.

(c) When appropriate, the contracting officer may use the clauses in the following VAAR sections in requests for quotations, solicitations, and contracts for the acquisition of commercial items if the contracting officer determines that the use is consistent with customary commercial practices:

(1) 852.211–70, Service data manuals.

(2) 852.211–74, Liquidated damages.

(d) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include by reference the clause at 852.271–70, Nondiscrimination in Services Provided to Beneficiaries.

(e) Micro-purchases that use the procedures of this part in conjunction with Part 813 do not require clauses unless the contracting officer determines that the use of clauses serves the Government's best interest.

(f) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

(1) 852.273–70, Late offers.

(2) 852.273–71, Alternative negotiation techniques.

(3) 852.273–72, Alternative evaluation.

(4) 852.273–73, Evaluation—health-care resources.

(5) 852.273–74, Award without exchanges.

(38 U.S.C. 8151–8153)

812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) Contracting officers may tailor solicitations to be inconsistent with customary commercial practice if they prepare and obtain approval of a waiver under paragraph (c) of this section.

(b) The contracting officer must prepare the waiver in accordance with FAR 12.302(c). The waiver is subject to the tailoring prohibitions in FAR 12.302(b)(1) through 12.302(b)(6).

(c) The contracting officer must obtain approval for waivers from the following:

(1) The Chief, Acquisition Assistance Division, for individual contracts.

(2) The Chief, Acquisition Program Management Division, for a class of contracts.

(d) Contracting officers must submit waiver requests no later than the solicitation issue date.

(e) Contracting officers must retain approved requests in the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 813.1—Procedures

Sec.

Subpart 813.3—Simplified Acquisition Methods

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 813.1—Procedures

813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

813.106–3 Award and documentation.

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10–2237b, Request for Dietetic Supplies.

813.106–70 Oral purchase orders.

When advantageous to VA, the contracting officer may use an oral purchase order for transactions not in excess of $2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against Federal Supply Schedule contracts. The contracting officer must assign a purchase order number to the transaction. A copy of any electronically generated purchase order may be used as a property voucher and receiving report to document receipt.

Subpart 813.3—Simplified Acquisition Methods

813.302 Purchase orders.

813.302.5 Clauses.

When using the VA Form 90–2138 or 90–2138–ADP for maintenance contracts involving services performed on Government property that have the potential for property damage and liability claims, the contracting officer must insert in the purchase order the Contractor's Responsibilities clause found at 852.237–70. Applicable maintenance contracts include, but are not limited to, window washing, pest control, and elevator maintenance.

813.307 Forms.

(a) The following forms provide a purchase or delivery order, vendor's invoice, and receiving report:

(1) VA Form 90–2138, Order for Supplies or Services.

(2) VA Form 90–2139, Order for Supplies or Services (Continuation).

(3) VA Form 90–2138–ADP, Purchase Order for Supplies or Services.

(4) VA Form 2139–ADP, Order for Supplies and Services (Continuation).

(b) The contracting officer may use the forms specified in paragraphs (a)(1) through (a)(4) of this section instead of OF 347, Order for Supplies or Services, OF 348, Order for Supplies or Services Schedule—Continuation, and SF 1449, Solicitation/Contract/Order for Commercial Items.

(c) The contracting officer or other properly delegated official (see 801.670–3) may use the following order forms when ordering the indicated medical, dental, and ancillary services totaling up to $10,000 per authorization when such services are not available under existing contracts:

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record Authorization and Invoice for Outpatient Service.

(d) In authorizing patient travel as set forth in VA manual MP–1, Part II, Chapter 3, the contracting officer or other properly delegated official (see 801.670–3) may use VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, as provided by that manual.

(e) The contracting officer must use SF 182, Request, Authorization, Agreement, and Certification of Training, for procurement of training.

(f) The contracting officer must use VA Form 10–2421, Prosthetics Authorization for Items or Services, for indicated services not in excess of $300.

PART 814—SEALED BIDDING

Subpart 814.1—Use of Sealed Bidding

Sec.

Subpart 814.2—Solicitation of Bids

Subpart 814.3—Submission of Bids

Subpart 814.4—Opening of Bids and Award of Contract

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 814.1—Use of Sealed Bidding

When fixed price contracts with escalation are authorized under 816.102(a), a contracting officer must comply with FAR 16.203–1 through 16.203–4.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) An invitation for bids for supplies, equipment, and services must be serially numbered at the time of issue. Numbers assigned locally must consist of the facility or VA National Acquisition Center division number, the serial number of the invitation, and the fiscal year in which the VA facility issues the invitation, *e.g.*, 533–24–05 for the 24th invitation issued by VA facility 533 in Fiscal Year 2005. A series beginning with the number 1 must be started each fiscal year. Numbers assigned from a national register may be sequential, without regard to year, and use whatever numbering system assigned by the national system.

(1) An invitation for bid for supplies, equipment, and services, that is numbered locally, must be numbered in the series of the year in which it is issued if it is issued, accepted, and becomes a contract in the same fiscal year but, because of procurement lead time, will not be performed until the next fiscal year.

(2) An invitation for bid, that is numbered locally, must be numbered in the next fiscal year series if it is issued

in one fiscal year but the contract will become effective and will be performed only in the next fiscal year.

(b) An invitation for a construction contract must bear the applicable invitation for bid number and the project number, if assigned.

(c) An invitation for bid containing a summary bid request must include the following statement:

'The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.'

(d) When a contracting officer determines that it will be to the Government's advantage to make an award by group or groups of items, the contracting officer must include a provision for the award by group or groups of items in the invitation for bids. This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following apply:

(1) It is desirable to award a minimum number of contracts.

(2) Furniture or fixtures are required for a single project and uniformity of design is desirable.

(3) The articles required will be assembled and used as a unit.

(e) A solicitation for a construction contract must contain a statement on the order of priority in which VA will award any alternative bid items, based on the relative importance of the items, VA's cost estimate, and the amount of funds available, when the following apply:

(1) VA intends to make a single aggregate award for all items in the solicitation within certain fiscal limitations.

(2) The solicitation asks for prices on an item and alternate item basis.

(f) A bid item schedule in a solicitation issued in compliance with paragraph (e) of this section should be structured substantially as follows:

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2 or Item No. 3, in that order, based on available funding. Offerors should quote a price on each item listed.

Item No. 1—Furnish all labor, material, equipment, etc., to paint Buildings No. 1, 2, and 3: $_____.

Alternate items in order of priority:

Item No. 2—Furnish all labor, material, equipment, etc., to paint Buildings No. 1 and 2: $_____.

Item No. 3—Furnish all labor, material, equipment, etc., to paint Building No. 1: $_____.

814.201–6 Solicitation provisions.

(a) The contracting officer must prominently place the provision entitled "Caution to Bidders—Bid Envelopes," as set forth in 852.214–70, in all invitations for bids where bid submissions are by other than electronic means.

(b) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer must define the extent to which VA will authorize and consider alternate bids. VA will consider for acceptance an alternate specified on construction projects only as a part of the basic item.

(1) When VA will consider an alternate item only if no bids or insufficient bids are received on an item desired, the contracting officer must include the provision set forth in 852.214–71, Restrictions on Alternate Item(s), in the invitation.

(2) When VA will consider an alternate item on an equal basis with the item specified, the contracting officer must include the provision set forth in 852.214–72, Alternate Item(s), in the invitation.

(3) In addition to the provision referenced in paragraph (b)(1) or (2) of this section, the contracting officer must include the provision set forth in 852.214–73, Alternate Packaging and Packing, in the invitation when bids will be allowed on different packaging, unit designation, etc.

(c) When the contracting officer determines that samples are necessary to the proper awarding of a contract, the contracting officer must include the provision set forth in 852.214–74, Bid Samples, in the solicitation, along with the provision in FAR 52.214–20, Bid Samples.

814.203 Methods of soliciting bids.

814.203–1 Transmittal to prospective bidders.

The contracting officer should include either a bid envelope or OF 17, Sealed Bid Label, with each invitation for bids furnished by mail or hand delivered to prospective bidders.

814.204 Records of invitations for bids and records of bids.

(a) The issuing office must establish and maintain a single register on a fiscal year basis for all solicitations. For each invitation to bid or request for proposal, the register must include the following:

(1) Bid or proposal number.

(2) Date of issue.

(3) Date of opening.

(4) Commodity or service involved.

(5) Disposition (i.e., contract number or purchase order number or, when applicable, no award).

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204(b).

814.208 Amendment of invitation for bids.

The contracting officer must send amendments to holders of drawings and specifications by certified mail, return receipt requested, or any other method that provides evidence of receipt. The contracting officer may send amendments by telegram, facsimile, or other method of rapid delivery that provides evidence of receipt, if time does not permit mailing.

Subpart 814.3—Submission of Bids

§ 814.301 Responsiveness of bids.

Where a contracting officer cannot administratively determine, in accordance with FAR 14.301, the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer must submit the matter through the DSPE to the Comptroller General for a decision. The submission must include copies of all pertinent papers.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation before the time set for opening.

814.304 Submission, modification, and withdrawal of bids.

(a) A notification to late bidders must specify the final date by which VA must receive evidence. This date must be within the time allowed by the apparent low bidder for acceptance of the low bidder's bid.

(b) All bids received by mail or delivered in person by the bidder (or telegram where authorized) must be time and date stamped immediately upon receipt at the VA facility mail room and in the office of the addressee designated in the invitation.

Subpart 814.4—Opening of Bids and Award of Contract

814.401 Receipt and safeguarding of bids.

The contracting officer is designated as the official to open bids for identification, as provided in FAR 14.401.

814.402 Opening of bids.

(a) The contracting officer must serve as, or designate, a bid opening officer, and must also designate a recorder.

(b) If a bid bond is required, the bid opening officer must read aloud the form and amount of bid security and the name of the surety. The recorder must record this information.

814.403 Recording of bids.

(a) The recorder must transcribe the information required for bid evaluation on the appropriate Abstract of Offers form (SF 1409 or OF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10–2237b, Request for Dietetic Supplies, provided that any supplemental sheets or forms are covered by one of the forms authorized for recording bid or price data.

(b) The bid opening officer must comply with the instructions in FAR 14.403 and certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of bid opening, a statement to that effect must also be included on, or attached to, the abstract or record of bids.

814.404 Rejection of bids.

814.404–1 Cancellation of invitations after opening.

(a) For each invitation to bid that VA cancels or for which it receives no bid, the contracting officer must do the following:

(1) File a copy of the invitation for bids, as provided for in FAR 14.404–1, together with the abstract showing to whom such bids were sent, in a separate folder identified by the invitation number.

(2) Annotate the abstract to show why an award was not made.

(3) Retain the folders for the current and two succeeding fiscal years.

(b) The HCA may approve cancellation of invitations for bid after opening and may approve completion of the acquisition after cancellation, as provided in FAR 14.404–1(e). The contracting officer must submit a Determination and Finding to the HCA for approval and signature.

814.404–2 Rejection of individual bids.

(a) When a contracting officer finds a bid that is being considered for an award is incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. The determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When VA receives a single bid in response to a solicitation, the contracting officer must not reject the offer simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer is a compelling reason for rejection; however, the contracting officer must first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

(c) In those cases where VA receives more than one bid, the contracting officer must reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

814.404–70 Questions involving the responsiveness of a bid.

If a contracting officer cannot resolve a question involving the responsiveness of a bid, the contracting officer may submit the question to the Comptroller General through the DSPE.

814.407 Mistakes in bids.

814.407–3 Other mistakes disclosed before award.

(a) In accordance with FAR 14.407–3(e), the authority of the Secretary to make the administrative determinations set forth in FAR 14.407–3(a), (b), (c), and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the DSPE. This delegation in no way impairs the delegations contained in Unpublished Decision of the Comptroller General B–122003 dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid before award, after complying with the provisions of FAR 14.407–3, the contracting officer must submit the complete file to the DSPE for an administrative determination. Based upon the evidence submitted, the DSPE shall determine the action the contracting officer is to take. The contracting officer may make no award until the DSPE makes a determination.

814.407–4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid under FAR 14.407–4(a), the contracting officer must forward a copy of the contract amendment or supplemental agreement and a copy of the contracting officer's determination, to the DSPE.

(b) For mistakes in a bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.407–4, must be forwarded to OGC through the DSPE, Acquisition Resources Service, for legal coordination. The DSPE shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.

(c) The DSPE, Acquisition Resources Service, must maintain the agency records of mistakes in bids after award required by FAR 14.407–4.

814.408 Award.

814.408–70 Award when only one bid is received.

(a) When VA receives only one bid in response to an invitation for bids, the contracting officer may consider and accept the bid if all of the following apply:

(1) The specifications used in the invitation were not restrictive.

(2) VA solicited adequate competition.

(3) The price is reasonable.

(4) The bid is otherwise in accordance with the invitation for bids.

(b) The contracting officer must make the determination in writing, and include it the contract file.

814.408–71 Recommendation for award (construction).

(a) For Central Office contracts, the Chief Facilities Management Officer, Office of Facilities Management, must analyze all bids received and submit a memorandum to the Secretary recommending award or other disposition of the project. A copy of each of the following must accompany the memorandum:

(1) The invitation.

(2) Each bid received.

(3) The abstract.

(4) Any other pertinent data.

(b) For facility-level contracts, the Chief, Engineering Service, must analyze all bids received and submit a memorandum recommending award or other disposition of the project to the contracting officer. The contracting officer alone must make the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor.

814.409 Information to bidders.

(a) An employee of VA may not disclose information as to probable

acceptance or rejection of any offer to any bidder or other person outside of VA.

(b) Except as provided in paragraphs (c) and (d) of this section, information about performance under a contract or an accepted bid is not public information and will be released to persons outside of VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information on performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information must be furnished through OGC.

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.3—Source Selection

Sec.
815.303 Responsibilities.

Subpart 815.4—Contract Pricing

815.404 Proposal analysis.
815.404–1 Proposal analysis techniques.
815.404–2 Information to support proposal analysis.

Subpart 815.6—Unsolicited Proposals

815.604 Department points of contact.
815.606 Department procedures.
815.606–1 Receipt and initial review.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 815.3—Source Selection

815.303 Responsibilities.

The authority of the Secretary to appoint an individual other than the contracting officer to service as the source selection authority for a particular acquisition or group of acquisitions is delegated to the SPE and is further delegated to the DSPE. If an HCA wishes to designate an individual other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the HCA shall prepare a request and justification and shall submit the request through channels to the DSPE for approval.

Subpart 815.4—Contract Pricing

815.404 Proposal analysis.

815.404–1 Proposal analysis techniques.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602–70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in FAR 15.404–1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

815.404–2 Information to support proposal analysis.

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

Subpart 815.6—Unsolicited Proposals

815.604 Department points of contact.

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposals or inquiries to the following:

(a) Facility level unsolicited proposals must be referred to the HCA for the field facility.

(b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.

(c) Proposals to VA Central Office must be referred to the DSPE.

815.606 Department procedures.

(a) The VA contact point will do the following:

(1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.

(2) In consultation with such technical/professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.

(b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

(c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:

(1) Determine if FAR 15.604 requires advance guidance;

(2) Determine whether a comprehensive evaluation prescribed by FAR 15.606–2 is appropriate and, if so, request that the offeror provide the necessary information; and,

(3) Establish an estimated due date for completion of the review process.

815.606–1 Receipt and initial review.

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606–1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

(4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE before negotiation on proposals processed at field offices. The contact point must provide the

DSPE all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by FAR Subpart 6.3 and results of any synopsis required by FAR Subpart 5.2. The DSPE will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

(e) The contact point will number each copy of the unsolicited proposal. A reviewing office must obtain approval of the contact point before duplicating an unsolicited proposal and must number copies as specified by the contact point. All copies must be returned to the contact point when the review is complete.

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.5—Indefinite-Delivery Contracts

816.504 Indefinite-quantity contracts.
816.505 Ordering.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracting officers must obtain technical review of solicitations that include a clause that provides for economic price adjustment specified in FAR 16.203–4 or any locally developed clause (see FAR 16.203–4(d)(2) and 801.602–72(d)). The request for approval must include a clearly stated need for the clause.

(b) The contracting officer must obtain the approval of the Director, Acquisition Resources Service (049A5), VA Central Office, before issuing a solicitation or awarding a contract that includes time-and-material or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds $100,000. See 801.602–71 for technical review requirements. Excluded from this requirement are time-and-material or labor-hour solicitations or proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair of storm damage, etc. (i.e., where FAR 6.302–2 applies).

(c) Except as provided in FAR 32.703–3, a contract that involves a direct obligation of appropriations and lasts for more than one year from the beginning of the contract period must provide that:

(1) The contract applies to the period stated in the contract, subject to availability of funds; and

(2) The contractor will not perform any service under the contract after September 30 of each fiscal year (or beyond the period of the basic contract or any authorized option if the contract crosses fiscal years as provided in FAR 32.703–3(b)) unless the contractor obtains specific authorization from the contracting officer.

(d) A/E contracts, construction contracts, or professional engineer contracts, financed by "no year" appropriations, are not subject to the requirements of paragraph (c) of this section.

Subpart 816.5—Indefinite-Delivery Contracts

816.504 Indefinite-quantity contracts.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, when the contracting officer cannot determine definite quantities to be acquired under a solicitation and intends to issue a solicitation for estimated quantities, the contracting officer shall insert the clause at 852.216–70, Estimated Quantities.

(b) The contracting officer shall insert the Alternate I clause at 852.216–70 in solicitations for bulk coal.

(c) The contracting officer shall insert the Alternate II clause at 852.216–70 in solicitations for estimated quantities of orthopedic, prosthetic, and optical supplies.

(d) The contracting officer shall insert the Alternate III clause at 852.216–70 in solicitations for monuments and headstones.

816.505 Ordering

The task order contract and delivery order ombudsman for VA is the Associate Deputy Assistant Secretary for Acquisitions (see FAR 16.505(b)(5)). Contracting officers may obtain the name, telephone number, facsimile number, and e-mail address of the current Associate Deputy Assistant Secretary for Acquisitions by contacting: The Office of Acquisitions (049A), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier that primarily seeks to reserve a place on the supplier's production or delivery schedule for long lead-time items. A letter of availability usually indicates products or services being considered for procurement. A supplier should not construe a letter of availability as a commitment. Prospective contractors sometimes solicit letters of availability or the letters may originate from Government personnel. A letter of availability differs from a letter contract, which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) For the following reasons, contracting officers may not use letters of availability unless the DSPE specifically authorizes them to do so:

(i) Letters of availability often cause potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of VA, the Government may be bound by the action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures that may not be recovered from the Government. In this instance, the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) Contractors need access to procurement information as soon as possible to make timely preparations. Therefore, procurement personnel should act as efficiently and expeditiously as possible on all procurement actions.

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-year Contracting

Sec.
817.105 Policy.
817.105–1 Uses.

Subpart 817.2—Options

817.202 Use of options.
817.204 Contracts.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 817.1—Multi-year Contracting

817.105 Policy.

817.105–1 Uses.

(a) Under 38 U.S.C. 114, VA contracting officers may enter into multi-year contracts for supplies and services not to exceed 5 years (unless otherwise authorized by statute), provided the Secretary or designee makes the following determinations:

(1) Appropriations are available for obligation to pay for the total payments for the fiscal year in which the contract is awarded plus the estimated amount of any cancellation charges.

(2) The contract serves the best interest of the Government by:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance; and

(iv) Encouraging effective competition.

(3) That, during the contract period:

(i) Demand for the supplies or services will continue;

(ii) Substantial changes in demand for supplies and services in terms of quantity or rate of delivery are unlikely; and

(iii) Specifications for the supplies or services will remain reasonably stable.

(4) The risk of the contractor's inability to perform under the terms and conditions of the contract is low.

(5) A multi-year contract will not inhibit competition from small businesses.

(6) For a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, that there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b) The Secretary has delegated authority to make the determinations specified in 817.105–1(a) as follows:

(1) HCAs may make the above determinations and approve contracts that do not require legal/technical reviews under 801.602–70 and that do not contain a first year cancellation ceiling exceeding 20 percent of the contract value over the full multi-year term.

(2) Authority to make the above determinations and to approval all other proposed multi-year contracts is delegated to the SPE and is further delegated to the DSPE. For approval purposes, the HCA will justify and document the use of a multi-year contract against each of the criteria specified in paragraphs (a)(1) through (a)(6) of this section and forward to the DSPE for approval. The justification must explain the cancellation ceiling and the method used to calculate that ceiling. The justification also must explain the advantages of multi-year contracts over other alternative methods, *e.g.*, option year contracts.

(c) The contracting officer must develop the cancellation ceilings in accordance with FAR 17.106–1. (38 U.S.C. 114)

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed under Office of Management and Budget Circular A–76 (Revised) cost comparisons will provide for four one-year renewal options as prescribed in FAR Subpart 17.2. The contracting officer must forward requests to use less or more than the prescribed contract period for Circular A–76 (Revised) cost comparisons to the DSPE for approval.

817.204 Contracts.

(a) The contracting officer must obtain the approval of the DSPE before awarding a contract that includes options exceeding the 5-year limitation specified in FAR 17.204(e). This requirement does not apply to contracts to be awarded by or on behalf of the VA Office of Inspector General. The request for approval must include the following:

(1) Supporting documentation, rationale, and justifications for the use of options (see FAR 17.205) and for exceeding the 5-year limitation.

(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602–71 through 801.602–73 shall be submitted for review concurrently as provided therein.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602–71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS PROGRAMS

Subpart 819.2—Policies

Sec.

Subpart 819.5—Set-Asides for Small Business

Subpart 819.6—Certificates of Competency and Determinations of Responsibility

Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

Subpart 819.70—Veteran-Owned and Operated Small Businesses

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 819.2—Policies

819.201 General policy.

The Director, Office of Small and Disadvantaged Business Utilization, is designated as the official responsible for making the determination required by FAR 19.201(f).

801.202 Specific policies.

819.202–1 Encouraging small business participation in acquisitions.

Contracting officers may negotiate payment terms of less than 30 calendar days to encourage small business participation. A period of less than 7 days may not be prescribed (see FAR 32.908(c)(2)). The contracting officer and the local fiscal officer must be in agreement on the negotiated payment terms before awarding the contract.

819.202–5 Data collection and reporting requirements.

(a) Administration heads, staff office directors, and HCAs must, in addition to the responsibilities designated in FAR

19.202–5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific small business program goals and providing other data necessary for goal assessment.

(b) Office of Facilities Management and Office of Acquisition and Materiel Management contracting offices must report achievement of subcontracting goals on a semiannual basis. The Office of Small and Disadvantaged Business Utilization must receive the reports not later than April 30 for the period ending March 31, and November 1 for the period ending September 30.

819.202–70 HCA responsibilities.

A HCA must perform the following functions in support of the small business program. These functions cannot be delegated without written approval of the Director, Office of Small and Disadvantaged Business Utilization:

(a) Develop, on an annual basis, a plan of operation to increase the share of contracts and purchase orders awarded to the small business programs prescribed in FAR Part 19. This plan must also include veteran-owned and service-disabled veteran-owned concerns.

(b) Promote goals for the small business programs set forth in FAR Part 19. This must also include veteran-owned and service-disabled veteran-owned concerns.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides.

(d) Review class set-asides, established in accordance with criteria in FAR 19.503, at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn.

(e) Maintain updated lists of acquisitions reserved for small business on a class basis.

(f) If the acquisition activity is assigned to a Small Business Administration Procurement Center Representative, assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the Small Business Administration Procurement Center Representative's official duties.

(g) Encourage technical personnel and end-users to participate in discussions with small businesses, veteran owned, and service-disabled veteran-owned concerns.

(h) Attend conferences and meetings publicizing small business programs. This responsibility may be delegated without the written approval of the Director, Office of Small and Disadvantaged Business Utilization.

819.202–71 Additional contracting officer responsibilities.

In addition to the duties designated in FAR 19.202 through 19.202–6, contracting officers must perform the following functions in support of the small business program:

(a) Make maximum use of small business source lists.

(b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.

(c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.

(d) Assist and counsel small business firms with individual problems.

(e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.

(f) Submit informational copies of all small business protests and appeals to the Director, Office of Small and Disadvantaged Business Utilization, at the same time they are submitted to the Small Business Administration.

Subpart 819.5—Set-Asides For Small Business

819.502 Setting aside acquisitions.

819.502–2 Total small business set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page _____, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page _____, applies to items _____ through _____ in this solicitation.

(b) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

819.502–3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502–3, it is determined that a particular procurement will be partially set aside for exclusive small business participation or small business participation, the solicitation for bids will have appropriate product or service classification, appropriate size standard and whichever of the following statement shall be placed on the face page:

Notice of partial set-aside, page _____, applies to item _____ through item _____ in this solicitation.

Subpart 819.6—Certificates of Competency and Determinations of Responsibility

819.602 Procedures.

819.602–3 Resolving differences between VA and the Small Business Administration.

The Director, OSDBU, is the VA liaison with the Small Business Administration. Information copies of correspondence sent to the Small Business Administration seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the Head of the Contracting Activity must seek concurrence from the Director, OSDBU.

Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

819.800 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of VA are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between $400,000 and $2 million) are proposed for 8(a) acquisition, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the VA contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to VA, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between VA and SBA and will be administered by VA.

Subpart 819.70—Veteran-Owned and Operated Small Businesses

819.7001 Policy.

(a) The Small Business Act directs the Small Business Administration to give "special consideration" to veterans of the Armed Forces in all Small Business Administration programs. It is the policy of VA to encourage participation by all veteran-owned and operated small businesses in VA acquisitions.

(b) All VA facilities having procurement requirements for which veteran-owned small businesses are known sources must take affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.
822.304 Variations, tolerances, and exemptions.
822.305 Contract clause.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.406 Administration and enforcement.
822.406–11 Contract terminations.

Authority: 29 CFR 5.15(d); 40 U.S.C. 121(c); 48 CFR 1.301–1.304.

Subpart 822.3—Contract Work Hours and Safety Standards Act

822.304 Variations, tolerances, and exemptions.

When issuing a contract for nursing home care, a contracting officer may exempt a contractor from certain requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) regarding the payment of overtime (see 29 CFR 5.15(d)(2) and 852.222–70).

822.305 Contract clause.

The contracting officer must insert the clause at 852.222–70, Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement, in solicitations and contracts for nursing home care when the FAR clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, is included.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.406 Administration and enforcement.

822.406–11 Contract terminations.

(a) Contracting officers must submit any proposed termination of a contract based on violations of the labor standard provisions of the contract to OGC for review and comment prior to taking final action. The submittal must include a detailed explanation of the facts and circumstances involved. Contracting officers, except those in the Office of Facilities Management, shall forward the submittal to OGC through the DSPE. Contracting officers in the Office of Facilities Management shall forward the submittal to OGC through the Chief Facilities Management Officer, Office of Facilities Management.

(b) If the contract is to be terminated, the DSPE or the Chief Facilities Management Officer, Office of Facilities Management, must submit the reports required by 29 CFR 5.7(d) over the signature of the SPE.

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 824.1—Protection of Individual Privacy

Sec.
824.102 General.

Subpart 824.2—Freedom of Information Act

824.203 Policy.

Authority: 38 CFR 1.550–1.559 and 1.575–1.584; 40 U.S.C. 121(c), and 48 CFR 1.301–1.304.

Subpart 824.1—Protection of Individual Privacy

824.102 General.

VA rules implementing the Privacy Act of 1974 are in 38 CFR 1.575 through 1.584.

Subpart 824.2—Freedom of Information Act

824.203 Policy.

VA rules implementing the Freedom of Information Act are in 38 CFR 1.550 through 1.559.

PART 825—FOREIGN ACQUISITION

Subpart 825.1—Buy American Act—Supplies

Sec.
825.103 Exceptions.
825.104 Nonavailable articles.

Subpart 825.2—Buy American Act—Construction Materials

825.202 Exceptions.
825.205 Postaward determinations.

Subpart 825.6—Trade Sanctions

825.602 Exceptions.

Subpart 825.8—Other International Agreements and Coordination

825.870 Technical assistance.

Subpart 825.9—Customs and Duties

825.902 Procedures.
825.902–70 Technical assistance.

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Acquisition of construction.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 825.1—Buy American Act—Supplies

825.103 Exceptions.

(a) *Public Interest.* When a contracting officer believes that a determination that domestic preference would be inconsistent with the public interest is necessary under FAR 25.103(a), the contracting officer must submit the request for determination to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. The request for determination must contain all the facts and other pertinent information upon which a determination may be made.

(b) *Non-availability.* (1) For each determination of non-availability made in accordance with FAR 25.103(b)(2)(i), the HCA must do the following:

(i) Factually support the determination and include the supporting facts in the contract file.

(ii) Forward a copy of the determination, along with supporting documentation, to the DSPE.

(2) If the contracting officer believes that the non-availability of an article is likely to affect future acquisitions, the contracting officer should include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

825.104 Nonavailable articles.

The following items are added to the list of nonavailable articles contained in FAR 25.104:

Glass, Lead
Glass, Wire
Insulin, human

Subpart 825.2—Buy American Act—Construction Materials

825.202 Exceptions.

(a) When a determination is required under FAR 25.202(a)(1), the contracting officer must submit the request for determination to the DSPE for submission to the SPE, who will

forward the request to the Secretary. The submission must contain all the facts and other pertinent information necessary for the Secretary to make a determination.

(b) For each determination of non-availability that the HCA makes in accordance with FAR 25.202(a)(2), the HCA must do the following:

(1) Factually support the determination in writing and include the determination in the contract file.

(2) Forward a copy of the determination, along with supporting documentation, to the Chief Facilities Management Officer, Office of Facilities Management, through the DSPE.

(3) If the contracting officer believes that the non-availability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

825.205 Postaward determinations.

A post-award determination that an exception to the Buy American Act applies, as provided in FAR 25.205(c), will be made in accordance with FAR 25.202 and 825.202.

Subpart 825.6—Trade Sanctions

825.602 Exceptions.

When the contracting officer determines it to be in the best interest of the Government, the contracting officer may request an exception to the requirements of FAR 25.601 from the Secretary through the DSPE and the SPE. Each such request must be fully justified, containing all pertinent facts, as provided in FAR 25.602(b). The SPE is responsible for notifying the U.S. Trade Representative of approved requests, as required by FAR 25.602(b)(2).

Subpart 825.8—Other International Agreements and Coordination

825.870 Technical assistance.

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Executive Director and Chief Operating Officer, VA National Acquisition Center.

Subpart 825.9—Customs and Duties

825.902 Procedures.

825.902–70 Technical assistance.

Should the regulations contained in FAR Subpart 25.9 be inadequate to meet the particular needs of the contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the contracting officer should contact the nearest United States Customs and Boarder Protection office for technical assistance. The location of the nearest office can be found at the U.S. Customs and Boarder Protection Web site at *http://www.customs.gov/xp/cgov/toolbox/contacts/cmcs/*.

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

(a) The contracting officer must prepare proposed determinations and findings to use either of the following:

(1) Alternate I of the FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(2) Alternate III of the FAR clause at 52.215–2, Audit and Records—Negotiation.

(b) The contracting officer must submit the determinations and findings to the DSPE for submission to the SPE, who will forward the request to the Secretary for the signature, as provided in FAR 25.1001(a)(2)(iii). The submission must include all appropriate documentation.

(c) The Secretary, upon concurring with the contracting officer's proposed determination and findings, will, if required by FAR 25.1001(a)(2)(iii), forward the document to the Comptroller General for concurrence.

(d) The completed determination and findings will be made part of the contract file.

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Acquisition of construction.

The Buy American Act (41 U.S.C. 10a–d), except as modified by various trade agreements (see FAR Part 25), requires that only domestic construction material be used in the performance of contracts for construction. For solicitations and contracts for construction that contain the FAR clauses related to the Buy American Act, the contracting officer must insert the applicable VAAR clause, with or without an alternate, as shown in Table 825.1102:

TABLE 825.1102

FAR clause	VAAR clause to be used
FAR 52.225–9, Buy American Act—Construction Materials	852.236–89, Buy American Act.
FAR clause 52.225–11, without its Alternate I (see FAR 25 1102(c))	852.236–89, Buy American Act, with its Alternate I.
FAR clause 52.225–11, Buy American Act—Construction Materials under Trade Agreements, with its Alternate I (see FAR 25.1102(c)(3)).	852.236–89, Buy American Act, with its Alternate II.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds and Other Financial Protections

Sec.

828.101 Bid guarantees.
828.101–2 Solicitation provision or contract clause.
828.101–70 Safekeeping and return of bid guarantee.
828.106 Administration.
828.106–6 Furnishing information.
828.106–70 Bond premium adjustment.

Subpart 828.2—Sureties and Other Security for Bonds

828.203 Acceptability of individual sureties.
828.203–7 Exclusion of individual sureties.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.
828.7101 Approval for indemnification.
828.7102 Extent of indemnification.
828.7103 Financial protection.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 828.1—Bonds and Other Financial Protections

828.101 Bid guarantees.

828.101–2 Solicitation provision or contract clause.

When a bid bond is required for supplies or services, the phrase "any cost of acquiring the work" in paragraph (e) of the Bid Guarantee clause in FAR 52.228–1 may be modified to refer to the cost of "supplies," "services," etc.

828.101–70 Safekeeping and return of bid guarantee.

(a) The contracting officer must retain, in a safe, certified checks or other negotiable security provided as bid security for the three lowest acceptable bids. After the contract and contract bonds have been signed and approved, the contracting officer must return the certified checks or other negotiable securities either:

(1) In person to the bidder who provides a proper receipt; or

(2) By any method that will provide evidence that the bidder received the security.

(b) The contracting officer should promptly return certified checks or other negotiable security furnished in support of bids, other than those determined to be the three lowest acceptable bids, to the respective bidders either:

(1) In person to the bidder who provides a proper receipt; or

(2) By any method that will provide evidence that the bidder received the security.

(c) The contracting officer will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the contracting officer will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

828.106 Administration.

828.106–6 Furnishing information.

The contracting officer for the applicable contract will furnish copies of payment bonds to a requestor under the provisions of FAR 28.106–6(c).

828.106–70 Bond premium adjustment.

When performance and payment bonds or payment protection are required, the contract must contain the clause in 852.228–70, Bond Premium Adjustment.

Subpart 828.2—Sureties and Other Security for Bonds

828.203 Acceptability of individual sureties.

828.203–7 Exclusion of individual sureties.

The DSPE may make the determinations referenced in FAR 28.203–7:

(a) To exclude individuals from acting as surety on bonds; and

(b) To accept bonds from individuals named on the Excluded Parties List System.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, must contain the provision in 852.228–71, Indemnification and Insurance.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA Manual MP–1, Part II, Chapter 3, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

(1) The service is not used solely for the purpose of avoiding entering into a continuing contract.

(2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts covering medical research or development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties that would not otherwise exist by law.

(c) As used in this subpart, the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision under 38 U.S.C. 7317. (38 U.S.C. 7317)

828.7101 Approval for indemnification.

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) Contracting officers must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)

828.7102 Extent of indemnification.

(a) A contract for medical research or development authorized by 38 U.S.C. 7303, may provide that the Government will indemnify the contractor against losses or liability specified in paragraphs (b) and (c) of this section if all of the following apply:

(1) The contract work involves a risk of an unusually hazardous nature.

(2) The losses or liability arise out of the direct performance of the contract.

(3) The losses or liability are not covered by the financial protection required under 828.7103.

(b) The Government may indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract defines as unusually hazardous. The indemnification will not cover liability under State or Federal worker's injury compensation laws to employees of the contractor who are both:

(1) Employed at the site of the contract work; and

(2) Working on the contract for which indemnification is granted.

(c) The Government may indemnify the contractor for loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(d) A contract that provides for indemnification in accordance with this subpart must also require that:

(1) The contractor must notify the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) The Government may choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

828.7103 Financial protection.

(a) A contractor must have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor's property that meets one of the following:

(1) The maximum amount of insurance available from private sources.

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(b) Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof

of financial responsibility, or a combination that provides the maximum amount required. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award, proof of financial responsibility up to the maximum amount required. (38 U.S.C. 7317)

PART 829—TAXES

Sec.
829.000 Scope of part.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.
829.202–70 Tax exemptions for alcohol products.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.
829.302–70 Purchases made from patients' funds.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

829.000 Scope of part.

This part states the policies and procedures for the following:

(a) Exemptions of alcohol products purchased for use by the VA medical care program from Federal excise taxes.

(b) Specified refund procedures for State and local taxes.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202–70 Tax exemptions for alcohol products.

(a) *General.* (1) VA is permitted to procure spirits to be used for non-beverage purposes free of tax under the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR 19.538 and 19.539, 20.241 through 20.246, 22.161 and 22.162, 22.171 through 22.176, 24.293, and 25.181 through 25.185). The use of tax-free alcohol, whiskey, beer, wine, and denatured spirits for non-beverage purposes shall include, but is not limited to, medicinal and scientific purposes.

(2) The Executive Director and Chief Operating Officer, National Acquisition Center, and the Head of the Contracting Activity may sign application permits on Department of Treasury-TTB Form 5150.33, Spirits for Use of The United States. This authority may not be delegated.

(b) *Whiskey, alcohol, and denatured alcohol.* (1) The contracting officer may obtain application forms for tax-free purchases from the TTB Distribution Center, P.O. Box 5950, Springfield, VA 22150–5950. The completed forms must be submitted to the Associate Director (Compliance Operations), Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20226.

(2) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or canceled. A copy of the current ATF Form 1444 or TTB Form 5150.33 must be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(3) Contracting officers may make purchases of excise tax-free whiskey and alcohol only from qualified distillery plants or bonded dealers. The accountable officer must ensure that accurate records of all receipts, usage, and destruction of tax-free distilled spirits are maintained at each medical center and must conduct a semi-annual physical inventory of the tax-free alcohol in the possession of the medical center (see 27 CFR 22.161 and 22.162).

(c) *Wine.* No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping.

(d) *Beer.* The contracting officer may procure tax-free beer only from licensed breweries and only when such product is prescribed for patients' therapeutic use.

(1) The contracting officer must submit an application for a TTB permit to purchase tax-free beer in letter form to the Director of the nearest TTB Regional Office or to the Director, Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20226. The following information must be included:

(i) Name and address of facility.

(ii) Specific purpose for which the beer will be used.

(iii) Quantity proposed to buy each month, year, etc.

(iv) Name and address of brewery.

(v) Copy of document authorizing the head of the contracting activity to sign the request (*i.e.*, paragraph (a)(2) of this section).

(2) The contracting officer must obtain a separate permit for each brewery from which beer is to be purchased.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

(a) If a vendor refuses to sell at a price exclusive of the State and local tax, the contracting officer must use Standard Form (SF) 1094, U.S. Tax Exemption Certificate, as a basis for billing taxing authorities for a refund of taxes paid.

(b) A contracting officer may not furnish an SF 1094 to a vendor or use SF 1094 to claim reimbursement from the taxing authority when the total amount of State and local tax on any one purchase is $10 or less.

829.302–70 Purchases made from patients' funds.

The contracting officer shall insert the clause at 852.229–70, Sales or Use Taxes, in solicitations and contracts when items are to be purchased solely from the personal funds of patients.

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.
831.7000 Scope of subpart.
831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.
831.7001–1 Tuition.
831.7001–2 Special services or courses.
831.7001–3 Books, supplies, and equipment required to be personally owned.
831.7001–4 Medical services and hospital care.
831.7001–6 Consumable instructional supplies.
831.7001–7 Reimbursement for other supplies and services.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts for providing vocational rehabilitation, education, and training to eligible veterans under 38 U.S.C. Chapter 31, (referred to as a "Chapter 31 program").

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001–1 Tuition.

(a) Except as provided in this section, when the contractor has a customary cost of tuition, the charge to VA may not exceed that charged to similarly circumstanced nonveteran students. If the contractor has more than one standard charge for the same service, the charge to VA must be the lowest price that is offered or published for the entire course, semester, quarter, or term.

(b) VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other on-the-job training. VA may elect to pay charges or expenses that fall into either of the following categories:

(1) Charges customarily made by a nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even if the trainee receives an incentive wage as part of the training.

(2) Training expenses incurred by an employer who provides on-the-job training following rehabilitation to the point of employability when VA determines that the additional training is necessary.

(c) When Federal funds pay the total cost of instruction or grants from the Federal Government pay a portion of the cost, (*e.g.* Smith-Hughes or other laws, excluding Federal Land Grant Funds), that subsidy will be taken into consideration in determining the charge to VA. The term "Federal Land Grant Funds" refers to those funds received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) A veteran who is participating in a Chapter 31 program and receives an award of a fellowship, scholarship, grant-in-aid, assistantship, or similar award will have that award treated according to the following requirements:

(1) If the award limits its use to payment of tuition, fees, or any charge that VA normally pays as part of a Chapter 31 program, VA will pay the portion of the charges remaining after applying the award.

(2) In all other cases, VA will pay the full amount of the tuition, fees, or other charges.

(e) If a State or other Government authority waives a veteran's tuition and fees, VA will reduce its payment of those charges by the amount of the waiver.

(f) VA will pay enrollment fees for registration if both of the following conditions exist:

(1) The institution or training establishment usually makes this charge.

(2) The charge is not more than other students or trainees pay.

831.7001–2 Special services or courses.

Special services or courses are those services or courses that VA requests that are over and above those the institution customarily provides for similarly circumstanced nonveterans and that the contracting officer considers to be necessary for the rehabilitation of the trainee. VA will negotiate the costs of special services or courses before paying them.

831.7001–3 Books, supplies, and equipment required to be personally owned.

(a) Reimbursement for supplies (including books, equipment, or other supplies) will be made as provided in this section.

(b) VA will provide reimbursement for those supplies that all students taking the same course or courses are customarily required to own personally. In addition, VA may provide reimbursement for items that the school does not specifically require for pursuit of the course, but that VA determines are needed because of the demands of the course, general possession by other students, and the disadvantage imposed on a veteran by not having the item. In no instance will VA provide reimbursement for supplies in a greater variety, quality, or amount than required of nonveteran students. In this instance, an item is not considered to be required if it is "requested" or "desirable to have" or "necessary for a future profession or job but not required by the institution of all students in the course".

(c) When supplies are available in several prices, grades, or qualities, VA will provide reimbursement only for that quality or grade that will meet the requirements.

(d) Partial payment agreements, in which VA shares payment with the veterans, are not allowed.

(e) The institution's costs in connection with a veteran's thesis are considered supplies and are therefore authorized for reimbursement if the veteran's committee chairman, major professor, department head, or appropriate dean certifies that the thesis is a course requirement and the expenses are required to complete the thesis. These expenses may include research expenses, typing, printing, microfilming, or otherwise reproducing the required number of copies.

(f) When the institution operates a bookstore or supply store for all students, reimbursement to the bookstore or supply store for supplies issued to trainees will be no greater than charges made to nonveteran students.

(g) When the institution, training establishment, or employer arranges for stores or other non-institutionally owned establishments to issue supplies to all students and a veteran is to pay the store or establishment for supplies issued to trainees, VA will provide reimbursement for those charges if they are no greater than those nonveterans pay or paid to the institutions, whichever is the lesser.

(h) Supplies that the institution purchases specifically for trainees will be reimbursed at the net cost to the institution.

(i) When the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(j) When it is customary in a survey class to permit each student to rent books for the subject (commonly referred to as a rental set), and the student is not required to own the books/materials, reimbursement is authorized for the rental charge as long as it does not exceed the charge made to nonveteran students.

(k) Educational and training institutions that furnish supplies to trainees that all students pursuing the same or similar course are required to own personally or obtain may be compensated for furnishing the supplies in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented subject to the following conditions:

(1) When the tuition covers the charges for supplies or rentals or a stipulated fee is assessed to all students, handling charges are not allowable.

(2) The handling charge is not allowable for Government-owned books that the institution procures from the Library of Congress.

831.7001–4 Medical services and hospital care.

(a) VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans, payment may be made if it is determined by the Veterans Health Administration that payment is in the best interest of the veteran and the Government.

(b) When the customary student's health fee does not cover medical services or hospital care, but these medical services are available in a school-operated facility or with doctors and hospitals in the immediate area through a prior arrangement, the Veterans Benefits Administration may provide reimbursement for these services in a contract for the services if:

(1) An arrangement is necessary to provide timely medical services for veterans attending the facility under provisions of Chapter 31; and

(2) The general rates established for medical services do not exceed the rates established by the Under Secretary for Health.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

831.7001–6 Consumable instructional supplies.

(a) VA will provide reimbursement for consumable instructional supplies that the institution require for the instruction of all students, veteran or nonveteran, pursuing the same or comparable course or courses when:

(1) The supplies are entirely consumed in the fabrication of a required project; or

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse by disassembling or dismantling the end product.

(b) VA will not provide reimbursement for consumable instructional supplies if any of the following apply:

(1) The supplies can be salvaged for reuse.

(2) The supplies are used in a project that the student has elected as an alternate class project to produce an end product of greater value than that normally required to learn the skills of the occupation and the end product will become the veteran's property upon completion.

(3) The supplies are used in a project that the institution has selected to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The sale value of the end product is equal to or greater than the cost of supplies plus assembly, and the supplies have not been reasonably used so that the supplies are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

(6) A third party loans the articles or equipment for repair or improvement and the third party would otherwise pay a commercial price for the repair or improvement.

(7) The number of projects resulting in end products exceeds the number normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies is included in the charge for tuition or as a fee designated for such purpose.

831.7001–7 Reimbursement for other supplies and services.

VA will provide reimbursement for other services and assistance that may be authorized under provisions of applicable Chapter 31 regulations, including, but not limited to, employment and self-employment services, initial and extended evaluation services, and independent living services.

PART 832—CONTRACT FINANCING

Sec.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

832.006 Reduction or suspension of contract payments upon finding of fraud.

832.006–1 General.

The SPE is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in FAR 32.006. This authority may not be redelegated.

832.006–2 Definitions.

The *remedy coordination official* for VA is the DSPE.

832.006–3 Responsibilities.

VA personnel must report suspected fraud related to advance, partial, or progress payments to the DSPE and VA Office of Inspector General. The report must include all available information supporting the suspicion.

832.006–4 Procedures.

(a) Any recommendation from a VA employee through the DSPE to the SPE to reduce or suspend payment to a contractor under FAR 32.006 must address the considerations in FAR 32.006–4(d).

(b) The DSPE shall carry out the responsibilities of the Secretary or designee in FAR 32.006–4(e) to notify the contractor of proposed action under FAR 32.006. The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the DSPE to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the DSPE does not receive a reply from the contractor within 30 calendar days, the DSPE will base his or her recommendations on the information available. Any recommendation of the DSPE under paragraph (a) of this section must address the results of this notification and the information, if any, provided by the contractor.

(c) The SPE must provide a copy of each final determination and the supporting documentation to the contractor, the DSPE and the contracting officer. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments under

Fixed-Price Construction Contracts, the contracting officer must insert the following clauses:

(a) If the solicitation or contract does not contain a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236–82, Payments under Fixed-Price Construction Contracts (Without NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

(b) If the solicitation or contract contains a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236–83, Payments under Fixed-Price Construction Contracts (Including NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

Subpart 832.2—Commercial Item Purchase Financing

832.201 Statutory authority.

The contracting officer may make the determination that terms and conditions for payment for commercial items are appropriate and customary in the commercial marketplace and are in the best interest of the Government, provided the terms and conditions for payment do not conflict with FAR Subpart 32.2.

832.202 General.

832.202–1 Policy.

As provided in FAR 32.202–1(d), contracting officers must obtain the approval of the DSPE before awarding a contract that includes unusual contract financing. The contracting officer must fully support the request with the reasons why the proposed unusual contract financing is in the best interest of the Government. In addition, contracting officers must not use commercial interim payment or commercial advance payment terms in solicitations or contracts without the approval of the DSPE.

832.202–4 Security for Government financing.

An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information to establish the offeror's financial capability and to determine the offeror's financial condition:

(a) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm.

(b) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract.

(c) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial crisis, and credit arrangements.

(d) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions.

(e) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business.

(f) Any other financial information deemed necessary.

(g) A Dun and Bradstreet Report on the company.

Subpart 832.4—Advance Payments for Non-Commercial Items

832.402 General.

Authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms, as provided by FAR 32.402(e)(1), is delegated to the SPE and is further delegated to the DSPE. Before award, contracting officers must submit a request for approval to use advance payment to the DSPE. The request must include the information required by FAR 32.409–1 and must address the standards for advance payment in FAR 32.402(c)(2).

832.404 Exclusions.

(a) Under 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(b) Under 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(c) Under 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502–2 Contract finance office clearance.

Contracting officers must obtain approval from the DSPE before taking the actions listed in FAR 32.502–2. Full justification and the recommendations of the contracting officer must accompany requests for approval.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805–70 Distribution/notification of assignment of claims.

(a) The contracting officer must:

(1) File the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the Government Accountability Office copy of the contract; and

(2) Forward a copy of the notice of assignment and instrument of assignment to the local finance office and to the payment office cited in the contract.

(b) Contracting officers must notify field facilities of any recognized assignment of payments for contracts under which payment for articles and services is certified and approved for payment in the field.

Subpart 832.9—Prompt Payment

§ 832.904 Determining payment due dates.

(a) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Based on this analysis, contracting officers may, when authorized by FAR 32.904, modify the number of days allowed for notifying contractors of defects in invoices or, for construction solicitations, the number of days allowed for payment of invoices specified in the applicable prompt payment clause. Changes, if any, should be made before issuing the solicitation.

(b)(1) For construction solicitations, the analysis specified in paragraph (a) of this section may routinely take more than the 7 days provided in paragraph (a)(2) of the FAR clause at 52.232–27,

Prompt Payment for Construction Contracts, to evaluate and return defective progress payment invoices.

(2) It also may take more than the 14 days provided in paragraph (a)(1)(i)(A) of the prompt payment clause to adequately inspect the work, determine the adequacy of the contractor's performance, approve, and pay progress payment invoices.

(3) Contracting officers should consider the following and, if necessary, revise the number of days stated in paragraphs (a)(2) and (a)(1)(i)(A) of the prompt payment clause before issuing construction solicitations (see FAR 32.904(d)(1)(i)):

(i) Recent interest payment history.

(ii) The complexity of the project.

(iii) Workload.

(iv) Work site location.

(4) In no event may the number of days be set in excess of 14 days for return of a defective progress payment invoice or 30 days for payment of the invoice.

Subpart 832.11—Electronic Funds Transfer

832.1106 EFT mechanisms.

(a) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT mechanisms other than those authorized under FAR 32.1106(a).

(b) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT for payments to be received by or on behalf of a contractor outside the United States or Puerto Rico or for contracts paid in other than United States currency, as provided in FAR 32.1106(b).

PART 833—PROTESTS, DISPUTES, AND APPEALS

Subpart 833.1—Protests

Sec.

Subpart 833.2—Disputes and Appeals

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 833.1—Protests

833.102 General.

Solicitations must instruct interested parties (see FAR provision 52.233–2) to send a copy of any protest filed with the Government Accountability Office (GAO) to the contracting officer and the appropriate VA Central Office activity as follows:

(a) For contracts to be awarded by the Office of Facilities Management: Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

833.103 Protests to VA.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may request an independent review by filing a protest with the DAS for A&MM, or for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management. A protest filed with the DAS for A&MM or the Chief Facilities Management Officer will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(2) Protests to the contracting officer must be in writing and addressed where offer/bid is to be submitted.

(3) Protests requesting an independent review must be in writing and addressed to the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or, for solicitations issued by the Office of Facilities Management, to the Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(4) The following types of protests may be dismissed by VA without consideration of the merits or forwarded to another agency for appropriate action.

(i) *Contract administration.* Disputes between a contractor and VA are resolved under the disputes clause of the contract and the Contract Disputes Act of 1978. (41 U.S.C. 601–613).

(ii) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. (15 U.S.C. 637(b)(6); 13 CFR 121.1002).

(iii) *Small business certificate of competency program.* A protest made under section 8(b)(7) of the Small Business Act, or in regard to any issuance of a certificate of competency or refusal to issue a certificate under that section, is not reviewed in accordance with bid protest procedures unless there is a showing of possible fraud or bad faith on the part of Government officials.

(iv) *Protests under section 8(a) of the Small Business Act.* The decision to place or not to place a procurement under the 8(a) program is not subject to review unless there is a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated. (15 U.S.C. 637(a)).

(v) *Affirmative determination of responsibility by the Contracting Officer.* An affirmative determination of responsibility will not be reviewed unless there is a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(vi) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is determined solely by the procuring agency, the Small Business Administration (if a small business is involved), and the Secretary of Labor. (41 U.S.C. 35–45).

(vii) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(viii) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(b) *Alternative dispute resolution.* Bidders/offerors and VA contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. The VA Board of Contract Appeals (VABCA) is an independent and neutral entity within VA and is available to serve as the third-party neutral (Neutral) for bid protests. If ADR is used, VA will not furnish any documentation in an ADR proceeding beyond what is allowed by the FAR.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the HCA will be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the

approving official will be the DAS for A&MM. For protests filed with the DAS for A&MM or the Chief Facilities Management Officer, Office of Facilities Management, those individuals will be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

(d) *Requests for GAO advance decisions.* When a written protest has been filed with the contracting officer and the contracting officer considers it desirable to do so, the contracting officer may request an advance decision from the Comptroller General. The contracting officer must send the submission to the Comptroller General through the DAS for A&MM or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, and must include the material listed in FAR 33.104(a). The contracting officer must promptly notify the protesting individual or firm in writing of the decision of the Comptroller General.

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award, the following requirements apply:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer must seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. If unsuccessful, the contracting officer must issue a stop-work order in accordance with contract clause FAR 52.233–3, Protest after Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer must furnish the protester a written explanation of the basis for the award that is responsive to the allegations of the protest. The contracting officer will advise the protester that the protester may appeal the determination to one of the following:

(i) The DAS for A&MM.

(ii) The Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management.

(iii) The Comptroller General.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer, after consulting with OGC, will advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer must submit the case promptly to the DAS for A&MM, for advice. The DAS for A&MM may consult with OGC and will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General, through the Assistant Secretary for Management, for a decision. The contracting officer will provide interested parties with a copy of the final decision.

(f) *Agency appellate review of the contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the DAS for A&MM or, for solicitations issued by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the appropriate officer named in this paragraph within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals must be addressed as provided in paragraph (a)(2) of this section. Appeals do not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided in this paragraph, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by OGC (025).

833.104 Protests to GAO.

(a) *General procedures.* (1) Procedures for protests to the Government Accountability Office (GAO) are at 4 CFR Part 21 (GAO Bid Protest Regulations). If guidance concerning GAO procedure in this section differs from 4 CFR Part 21, 4 CFR Part 21 applies.

(2) When a protest before or after award has been filed with GAO, the contracting officer must submit a report to the DAS for A&MM, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, within 5 workdays after receipt of verbal or written notice of the protest, whichever occurs first. The report must include a copy of the documentation indicated in FAR 33.104(a)(3).

(3) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(4).

(b) *Protests before award.* When VA receives notice from GAO of a pre-award protest filed directly with GAO, award will normally not be made until the matter is resolved. However, award may be made despite the protest if the DAS for A&MM, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, approves the findings of the HCA required by FAR 33.104(b)(1) and GAO has been notified as provided by FAR 33.104(b)(2). The Director, Acquisition Resources Service, or the Chief Facilities Management Officer, as appropriate, is responsible for notifying GAO.

(c) *Protests after award.* When, after award of a contract, VA receives notice from GAO of a protest filed directly with GAO, the contracting officer must, if required to do so by FAR 33.104(c)(1), immediately suspend performance. However, contract performance need not be suspended, despite the protest, if the SPE approves the HCA's findings required by FAR 33.104(c)(2) and GAO has been notified under FAR 33.104(c)(3). Authority to approve the HCA's findings is further delegated to the DSPE and, for solicitations issued by the Officer of Facilities Management, the Chief Facilities Management Officer. The Director, Acquisition Resources Service, or the Chief Facilities Management Officer, as appropriate, is responsible for notifying GAO.

833.106 Solicitation provisions.

(a) The contracting officer will insert the provision at 852.233–70, Protest Content/Alternative Disputes Resolution, in each solicitation expected to exceed the simplified acquisition threshold.

(b) The contracting officer must insert the provision at 852.233–71, Alternative Protest Procedure, in solicitations expected to exceed the simplified acquisition threshold.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

The contracting officer must refer matters relating to suspected fraudulent claims to the Office of Inspector General for investigation and referral to the Department of Justice. The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of Inspector General.

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer must furnish the contractor the contracting officer's final decision in the matter.

(b) The contracting officer must identify the decision, in writing, as a final decision and include a statement of facts in sufficient detail to enable the contractor to fully understand the

decision and the basis on which it was made. The decision must set forth those facts relevant to the dispute with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) The decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following statement:

> The VA Board of Contract Appeals (VABCA) is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the VABCA are published in section 1.783 of title 38, Code of Federal Regulations. The address of the Board is: VA Board of Contract Appeals (09), 810 Vermont Avenue, NW., Washington, DC 20420.

833.212 Contracting officer's duties upon appeal.

(a) When a contracting officer receives notice of appeal in any form, the contracting officer must do the following:

(1) Annotate the appeal with the date of mailing (or date of receipt, if otherwise conveyed).

(2) Within 10 days, forward the original notice of appeal and a copy of the contracting officer's final decision letter to the VABCA.

(3) Concurrently transmit copies of the notice of appeal and the final decision letter to the DAS for A&MM and OGC. (In cases of construction contracts administered by the Office of Facilities Management, copies of the appeal and the final decision letter need not be transmitted to the DAS for A&MM but instead should be sent to the Chief Facilities Management Officer.)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer must assemble and transmit to the VABCA, through OGC, an appeal file consisting of all documents pertinent to the appeal, including all of the following:

(1) The decision and findings of fact that are being appealed.

(2) The contract, including specifications and pertinent amendments, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABCA.

(5) Any additional information considered pertinent.

833.213 Obligation to continue performance.

(a) As provided in FAR 33.213, contracting officers shall use FAR clause 52.233–1, Disputes, with its Alternate I. Clause 52.233–1 requires the contractor to continue performance in accordance with the contracting officer's decision in the event of a claim arising *under* a contract. Alternate I expands this authority, adding a requirement for the contractor to continue performance in the event of a claim *relating to* the contract.

(b) In the event of a dispute not arising under, but relating to, the contract, if the contracting officer directs continued performance, the contracting officer may consider providing financing for the continued performance, provided, that the Government's interests are properly secured. The contracting officer will contact the DAS for A&MM and OGC for advice prior to authorizing such financing.

833.214 Alternative dispute resolution (ADR).

(a) Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures, by using VA's ADR Program, to resolve contract disputes before they become appealable disputes.

(b) Under VA's ADR Program, the Chair of the VA Board of Contract Appeals (VABCA or Board), who is VA's Dispute Resolution Specialist, will appoint a Board member (at no cost to either party) to serve as a Neutral to aid in resolving matters before the matters become appealable disputes. The administrative judges are trained Neutrals and are available to assist in ADR proceedings.

(c) In the event a Board member serves as a Neutral in a matter that is not resolved using ADR, that Board member will keep all discussions confidential until the matter is finally resolved and may, at the request of either party involved, have no further input or contact with the parties or other Board members in subsequent Board activities relating to the dispute (ref. the Administrative Dispute Resolution Act, 5 U.S.C. 571–583; and FAR 33.214).

(d) Contracting officers and contractors are also encouraged to use ADR in disputes that have already been appealed to the VABCA.

833.215 Contract clause.

The contracting officer must use the clause at 52.233–1, Disputes, with its Alternate I (see 833.213).

Subchapter F—Special Categories of Contracting

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.2—Special Aspects of Contracting for Construction

Subpart 836.5—Contract Clauses

Subpart 836.6—Architect-Engineer Services

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications.

(a) The procedures described in Part 811 are applicable to construction specifications.

(b) During the design stage, contract architect-engineers must not use "brand name or equal" or other restrictive specifications without the prior written approval of the contracting officer. The

contracting officer must inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If VA has determined that only one product will meet the Government's minimum needs and VA will not allow the submission of "equal" products, the contracting officer must include the clause found at 852.236–90, Restriction on Submission and Use of Equal Products, in the solicitation and complete the clause by listing the items to which the clause applies. This clause places bidders on notice that the "brand name or equal" provisions of the clause found at FAR 52.236–5, Materials and Workmanship, and any other provision that may authorize the submission of an "equal" product, will not apply to the specific items listed.

836.203 Government estimate of construction costs.

The overall amount of the Government estimate must not be disclosed until after award of the contract. After award, the contracting officer may disclose the overall amount upon request.

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the contracting officer must identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:

(a) Less than $25,000.
(b) Between $25,000 and $100,000.
(c) Between $100,000 and $250,000.
(d) Between $250,000 and $500,000.
(e) Between $500,000 and $1,000,000.
(f) Between $1,000,000 and $2,000,000.
(g) Between $2,000,000 and $5,000,000.
(h) Between $5,000,000 and $10,000,000.
(i) Between $10,000,000 and $20,000,000.
(j) Between $20,000,000 and $50,000,000.
(k) Between $50,000,000 and $100,000,000.
(l) More than $100,000,000

836.206 Liquidated damages.

The contracting officer may include a liquidated damages provision in a construction contract when the criteria of FAR 11.501 and 811.501 are met. If partial performance may be accepted and used to the advantage of the Government, the contracting officer must include the clause substantially as set forth in 852.211–74, Liquidated Damages, in addition to the clause set forth in FAR 52.211–12.

836.209 Construction contracts with architect-engineer firms.

(a) When the contracting officer considers it necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to a firm or person that designed the project, the contracting officer must request prior approval from one of the following:

(1) The facility or VISN director, as appropriate, or, for National Cemetery Administration contracts, the Director, Technical Support Service, for contracts involving nonrecurring maintenance (NRM) funds.

(2) The Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds.

(b) The contracting officer must furnish complete justification in the request.

(c) This section does not apply to design-build contracts, as defined at FAR 36.102.

836.213 Special procedures for sealed bidding in construction contracting.

836.213–4 Notice of award.

The contracting officer must provide to the contractor a notice of award (letter of acceptance) for any contract award in excess of $25,000.

836.213–70 Notice to proceed.

(a) The contracting officer must provide construction contractors with a written notice to proceed with the work. A notice to proceed will normally be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the contracting officer may include in the award letter a notice to proceed, with the reservation that payments are contingent upon receipt and approval of the required bonds or payment protection.

(b) If the contract provides for liquidated damages, the contracting officer must send the notice to proceed by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work must be completed within_____ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. In notices to proceed for these contracts, the contracting officer must establish a date for completion that takes into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, the contracting officer must furnish a copy to the resident engineer or the Chief, Engineering Service.

(e) The contracting officer must file a copy of the notice to proceed with copy A of the contract. When certified mail or other method of certified delivery is used, the contracting officer must attach the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service to the copy of the notice to proceed. The contracting officer must file copies of the notice to proceed with copies C and D of the contract after the date of receipt has been established and indicated on the notice to proceed.

Subpart 836.5—Contract Clauses

836.500 Scope of subpart.

(a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses and provisions that differ from those contained in FAR Subparts 36.5 and 52.2 and this subpart, but considered essential to the procurement of VA requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

836.501 Performance of work by the contractor.

The contracting officer must insert the clause at 852.236–72, Performance of Work by the Contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor. When the solicitations or contracts include a section entitled "Network Analysis System (NAS)," the contracting officer must use the clause with its Alternate I.

836.513 Accident prevention.

The contracting officer must insert the clause at 852.236–87, Accident Prevention, in solicitations and contracts for construction that contain the clause at FAR 52.236–13, Accident Prevention.

836.521 Specifications and drawings for construction.

The contracting officer must insert the clause at 852.236–71, Specifications and Drawings for Construction, in solicitations and contracts for construction that include the FAR clause at 52.236–21, Specifications and Drawings for Construction.

836.570 Correspondence.

The contracting officer must insert the clause at 852.236–76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction (currently $2,000).

836.571 Reference to "standards."

The contracting officer must insert the clause at 852.236–77, Reference to "Standards," in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

836.572 Government supervision.

The contracting officer must insert the clause at 852.236–78, Government Supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

836.573 Daily report of workers and materials.

The contracting officer must insert the clause at 852.236–79, Daily Report of Workers and Materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

836.574 Subcontracts and work coordination.

The contracting officer must insert the clause at 852.236–80, Subcontracts and Work Coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

836.575 Schedule of work progress.

The contracting officer must insert the clause at 852.236–84, Schedule of Work Progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction and that do not contain a section entitled "Network Analysis System (NAS)."

836.576 Supplementary labor standards provisions.

The contracting officer must insert the clause at 852.236–85, Supplementary Labor Standards Provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

836.577 Worker's compensation.

The contracting officer must insert the clause at 852.236–86, Worker's Compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

836.578 Changes—supplement.

(a) The contracting officer must insert the clause at 852.236–88, Contract Changes—Supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction. (This section has been promulgated as a deviation from the FAR as provided in 801.4.)

(b) When negotiated changes exceed $500,000, paragraph (a) of the clause at 852.236–88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must furnish cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404–2.

(c) When the negotiated change will be $500,000 or less, paragraph (b) of the clause at 852.236–88 will apply. Because the indirect cost rates in paragraph (b) of the clause at 852.236–88 are ceiling rates, the contracting officer must negotiate indirect expense rates within the ceiling limitations.

836.579 Special notes.

The contracting officer must insert the clause at 852.236–91, Special Notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

Subpart 836.6—Architect-Engineer Services

836.602 Selection of firms for architect-engineer contracts.

836.602–1 Selection criteria.

(a) In addition to the evaluation criteria set forth in FAR 36.602–1, the evaluation board must consider the factors set forth in paragraph (b) of this section as they apply to the project or purpose of the selection. Values must be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the pre-selection process. The board may adjust the assigned values after its discussions.

(b) The following factors must be considered:

(1) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(2) Record of significant claims against the firm because of improper or incomplete architectural and engineering services.

(3) Specific experience and qualifications of personnel proposed for assignment to the project and their record of working together as a team.

836.602–2 Evaluation boards.

(a) The Chief Facilities Management Officer, Office of Facilities Management, shall appoint an evaluation board to select architect-engineer contractors for Office of Facilities Management projects. The Director, Office of Construction Management, shall appoint an evaluation board to select architect-engineer contractors for National Cemetery Administration projects. The facility or VISN director, as appropriate, shall appoint an evaluation board to select architect-engineer contractors for field facility projects.

(b) The Director, A/E Evaluation and Program Support Service, will chair the evaluation board for Office of Facilities Management architect-engineer contracts. The Chair may designate the Project Director or Project Manager to act as Chair when necessary. When appointing the board's members, the Chief Facilities Management Officer, Office of Facilities Management, must include the appropriate Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. The Chief Facilities Management Officer may designate additional members from the Office of Facilities Management or

from other Department administrations and staff offices when appropriate.

(c) The Director, Office of Construction Management, shall ensure that the board consists of no fewer than three members, one of whom must be a National Cemetery Administration senior level contracting officer. The Director shall designate one of the board members as the Chair.

(d) The evaluation board for a VA field facility must consist of no fewer than two members, one of whom will be the HCA (or the senior contracting officer at the facility if there is no HCA on site) and the other will be the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, the facility or VISN director must appoint an additional engineer to the board. The Chair of the board will be the senior engineer.

836.602–4 Selection authority.

The Chief Facilities Management Officer, Office of Facilities Management (for Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and the facility or VISN director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the respective evaluation boards.

836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Either of the procedures provided in FAR 36.602–5 may be used to select firms for architect-engineer contracts that are not expected to exceed the simplified acquisition threshold.

836.603 Collecting data on and appraising firms qualifications.

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 330 and maintaining a data file on architect-engineer qualifications.

836.606 Negotiations.

836.606–70 General.

To assure that the fee limitation is not violated, the contracting officer must maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

836.606–71 Architect-engineer's proposal.

(a) When the contract price is estimated to be $50,000 or more, the contracting officer must use VA Form 10–6298, Architect-Engineer Fee Proposal, to obtain the proposal and supporting cost data from the contractor and subcontractor in the negotiation of architect-engineer contracts for design services.

(b) In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer must use VA Form 10–6298 supplemented or modified as needed for the particular project type.

836.606–72 Contract price.

(a) Where negotiations with the top-rated firm are unsuccessful, the contracting officer shall, after authorization by the Chief Facilities Management Officer, Office of Facilities Management, the Director, Office of Construction Management, or the facility or VISN director, as appropriate, terminate the negotiations and undertake negotiations with the firm next in order of preference.

(b) The contracting officer shall submit a recommendation for award of the contract at the negotiated fee to the Chief Facilities Management Officer, Office of Facilities Management, the Director, Office of Construction Management, or the facility or VISN director, as appropriate. A copy of the negotiation memorandum prepared in accordance with FAR 15.406–3 and, whenever a field pricing report has been received, a copy of the report must accompany the recommendation.

836.606–73 Application of 6 percent architect-engineer fee limitation.

(a) The total cost of the architect or engineer services contracted for must not exceed 6 percent of the estimated cost of the construction project plus any fees for related services and activities such as those shown in paragraph (c) of this section.

(b) To support project submissions, the engineering officer or project engineer must use VA Form 10–1193, Application for Health Care Facility Project, and Form 10–6238, EMIS Construction Program Estimate Worksheet, and must show the proposed technical services where necessary and applicable.

(c) The 6-percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements, including schematic or preliminary plans and estimates;

(ii) Determination of feasibility of proposed project;

(iii) Preparation of measured drawings of existing facility;

(iv) Subsurface investigation;

(v) Structural, electrical, and mechanical investigation of existing facility; and

(vi) Surveys: topographic, boundary, utilities, etc.

(2) Special consultant services that are not normally available in organizations of architects or engineers and that are not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media;

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications;

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase; and

(iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracts—General

Subpart 837.2—Advisory and Assistance Services

Subpart 837.4—Nonpersonal Health Care Services

Subpart 837.70—Mortuary Services

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is

necessary in determining whether a proposed service contract is for personal or non-personal services, the contracting officer will request a legal opinion from the appropriate Regional Counsel.

837.110 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 852.237–70 Contractor Responsibilities, in solicitations and contracts for services.

837.110–70 Services provided to eligible beneficiaries.

Contracting officers shall include the clause at 852.271–70, Nondiscrimination in Services Provided to Beneficiaries, in all solicitations and contracts covering services provided to eligible beneficiaries.

Subpart 837.2—Advisory and Assistance Services

837.203 Policy..

The definition of advisory and assistance services includes, in addition to examples listed in FAR 37.203, services to obtain peer review of research proposals.

Subpart 837.4—Nonpersonal Health Care Services

837.403 Contract clause.

The contracting officer shall insert the clause at 852.237–7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237–7, in solicitations and contracts for nonpersonal health-care services, including contracts awarded under the authority of 38 U.S.C. 7409, 38 U.S.C. 8151–8153, and part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR Part 13 and Part 813.

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of VA, as provided in 38 U.S.C. 2302, 2303, and 2308.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Chief, Medical Administration Service (MAS) personnel or other personnel designated by the facility director to perform these functions, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of $300 (see 38 U.S.C. 2302). Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director that would ensure the adequacy of the funeral director's services and casket, arrangements will be made before contract negotiation to inspect the premises and the casket to be provided, as well as to check with the local business bureau and/or Chamber of Commerce. (38 U.S.C. 2302)

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a VA health care facility or in a non-VA institution at VA's expense, and the decedent's remains are unclaimed, the Chief, MAS, or the person designated by the facility director to perform these functions, will forward to the HCA a properly executed VA form 10–2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of $300. The purchase order must list the specific services to be provided. The services must consist of the following:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, at a minimum, must be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable.)

(4) The securing of all necessary permits.

(5) Ensuring that a United States flag (provided the funeral director in accordance with M–1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 2308. This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside shipping box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the $300 allowance.

(d) In accordance with M–1, Part I, paragraph 14.37, the contracting officer will designate the Chief, MAS, or the person designated by the facility director to perform these functions, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The HCA will assist the Chief, MAS, or the person designated by the facility director to perform these functions, in developing the local procedures specified in M–1, Part I, paragraph 14.37c. (38 U.S.C. 2302, 2303, and 2308)

837.7004 Administrative necessity.

(a) VA may make arrangements and assume expenses for local burial under separate contractual agreement when:

(1) A person dies under VA care who is not legally entitled to such care at VA's expense;

(2) No relatives or friends claim the remains; and

(3) The municipal, county, or State officials refuse to provide for final disposition.

(b) When the contracting officer cannot obtain a full and complete funeral and burial service as prescribed in 837.7003 within the statutory allowance, before taking any further action, the contracting officer will secure from the facility or VISN director, as appropriate, a written determination that VA must accomplish the disposition of the remains as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose.

(c) The contracting officer will make the facility director's determination and authorization a part of the contract file. (38 U.S.C. 2302)

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care or treatment of VA will be referred to the Veterans Services Officer for processing in accordance with M27–1, Part II.

PART 841—ACQUISITION OF UTILITY SERVICES

Subpart 841.1—General

Sec.

Subpart 841.2—Acquiring Utility Services

841.201 Policy.

Authority: 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

Subpart 841.1—General

841.100 Scope of part.

This part prescribes procedures for obtaining delegations of authority to award contracts for utility connection charges and provides guidance on review requirements for such proposed contracts.

841.103 Statutory and delegated authority.

(a) The Assistant Commissioner for Procurement, General Services Administration (GSA), has delegated the Secretary of Veterans Affairs authority to enter into public utility contracts for connection charges for utility services.

(b) Except as provided in paragraph (a) of this section, the authority to award all other contracts for utility services, as defined in FAR 41.101, is vested in GSA (see FAR 41.103). VA contracting officers who wish to award local contracts for utility services, other than for connection charges, must first obtain a delegation of authority to award such contracts from GSA. Contracting officers shall submit requests for delegation of authority directly to GSA.

(c) Any authority described in paragraphs (a) or (b) of this section delegated to the Secretary is further delegated to the SPE and is further delegated to the DSPE and to VA contracting officers within the limits of their warrants.

Subpart 841.2—Acquiring Utility Services

841.201 Policy.

As required by 801.602–71, contracting officers must submit solicitations and proposed agreements for utility services exceeding $50,000 in total costs to the appropriate Acquisition Resources Service office for technical and legal review.

Subchapter G—Contract Management

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

842.000 Scope of part.

This part applies to all contracts, whether awarded through sealed bidding or negotiation.

842.070 Definitions.

Contract administration is the coordination of actions required for the performance of a contract. This includes the contracting officer's guidance and supervision necessary to assure that the contractor fulfills all contractual obligations.

Subpart 842.1—Contract Audit Services

842.101 Contract audit responsibilities.

(a) Contracting officers must use the support services of other agencies to the extent feasible. Examples of such services include: pre-award surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Contracting officers obtaining support services from any other Government department or agency must do so on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding between the parties to the agreement. The agreement should clearly state the following:

(1) The accord reached between the two parties involved, especially the obligations assumed and the rights granted each party.

(2) The resources that both the supplying and receiving parties will provide.

(3) The funding and reimbursement arrangements.

(4) Clauses permitting revisions, modifications, or cancellation of the agreement.

842.102 Assignment of contract audit services.

(a) When required, contracting officers shall request the assistance of the VA Office of the Inspector General (OIG), Contract Review and Evaluation Division, to provide pre- and post-award audit, review, and advisory services associated with the award or modification of:

(1) Federal Supply Schedule and other contracts awarded by the VA National Acquisition Center;

(2) Scarce medical specialist or sharing contracts awarded under the authority of 38 U.S.C. 7409 or 8153, and;

(3) Claims involving such contracts.

(b) Contracting officers may request the assistance of either the VA OIG Contract Review and Evaluation Division or the Defense Contract Audit Agency (DCAA) to provide pre- and post-award audit, review, and advisory services associated with other types of contracts or claims.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers must request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed-price incentive, and fixed-price redeterminable contracts as prescribed in FAR Subpart 42.7.

(b) When the quick closeout procedures are used, the contracting officers must perform a review and validation of the contractor's data for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

Subpart 842.8—Disallowance of Costs

842.801 Notice of intent to disallow costs.

842.801–70 Audit assistance prior to disallowing costs.

If a contracting officer determines that costs should be disallowed during the performance of a cost reimbursement, fixed-price incentive, or fixed-price redetermination contract exceeding the thresholds specified in FAR 15.403–4, the contracting officer must request audit assistance. The VA Office of Inspector General shall conduct audits of contracts for health care resources and contracting officers shall request such audits directly from that office. For all other types of contracts, the contracting officer must obtain an audit control number from Acquisition Resources Service and send a formal request to conduct the audit directly to the nearest Defense Contract Audit Agency (DCAA) office, referencing the audit control number and the project number (if any).

842.803 Disallowing costs after incurrence.

Contracting officers may approve or disapprove contractors' vouchers for payment and process them to the servicing fiscal office. Such approval or disapproval must be within the limitations of the contracting officer, and the contract for which the voucher is submitted must be within the

contracting officer's delegation of contracting authority.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Before execution of novation and change-of-name agreements, contracting officers must submit all supporting agreements and documentation to the OGC for review as to legal sufficiency.

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.

Subpart 846.4—Government Contract Quality Assurance

Subpart 846.7—Warranties

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 846.3—Contract Clauses

846.302 Fixed-price supply contracts.

846.302–70 Guarantee clause.

The contracting officer shall insert the clause at 852.246–70, Guarantee, in solicitations for the acquisition of equipment.

846.302–71 Inspection.

The contracting officer shall include a "Rejected Goods" contract clause in solicitations and contracts as follows:

(a) Except as provided in paragraph (b) of this section, insert the clause at 852.246–71, Inspection, in solicitations and contracts for the acquisition of supplies or equipment.

(b) In solicitations and contracts for packing house and dairy products, bread and bakery products, and for fresh and frozen fruits and vegetables, insert the Alternate I clause at 852.246–71, Inspection.

846.302–72 Frozen processed foods.

The contracting officer shall insert the clause at 852.246–72, Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

846.302–73 Noncompliance with packaging, packing and/or marking requirements.

The contracting officer shall insert the clause at 852.246–73, Noncompliance with Packaging, Packing and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c) and 812.302.

846.312 Construction contracts.

The contracting officer shall insert the clause at 852.236–74, Inspection of Construction, in solicitations and contracts for construction that include the FAR clause at 52.246–12, Inspection of Construction.

Subpart 846.4—Government Contract Quality Assurance

846.408 Single-agency assignments of Government contract quality assurance.

846.408–70 Inspection of subsistence.

(a) Before issuing a solicitation for subsistence, the contracting officer must determine whether:

(1) Representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce will inspect for specification compliance before shipment; or

(2) Personnel of the purchasing activity will inspect for specification compliance at the time of delivery.

(b) The contracting officer must indicate the time and place of inspection in the solicitation.

(c) Because the requirement for USDA or Department of Commerce inspections and certifications result in additional contractor costs that may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Nutrition and Food Service, must evaluate the need for such inspections. The evaluation must include the following:

(1) The quality assurance already provided by other mandatory inspection systems.

(2) The proposed suppliers' own quality control system.

(3) Experience with the proposed suppliers.

(4) The pre-qualifying of the suppliers' quality assurance systems and subsequently waiving inspections and certifications for future solicitations.

(5) The cost of the inspections.

(d) When the contracting officer indicates that either the USDA or the Department of Commerce will conduct the inspection, the contracting officer must also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment or is furnished to the receiving installation before shipment, or notifying the installation when the certificate is not immediately available.

(4) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer.

(5) Furnishing samples for inspection at the contractor's expense.

(6) Indicating the address where inspection will occur.

(e) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.408–71 Waiver of USDA inspection and specifications.

(a) When the amount of an item to be purchased will not exceed 500 pounds per delivery, the contracting officer may purchase the following without reference to the specifications in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900–SL, and the USDA inspection requirements:

(1) Butter.
(2) Cheese (except cottage cheese).
(3) Sausage.
(4) Meat food products*.
(5) Bacon, smoked.
(6) Bacon, Canadian style.

(b) When the items listed in paragraph (a) of this section are procured together with items that are not exempt, the contracting officer must include the following in the solicitation:

Items * * * are not required to be in accordance with the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900–SL, and the special USDA inspection is not required. VA will inspect for quality and condition upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(c) As appropriate, the contracting officer must include the following statements in each invitation for bid, request for proposal, quotation, or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products.*

(i) This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act that requires the listing of all ingredients in the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption.

(d) When using a "brand name or equal" purchase description, the contracting officer must list every brand name item that is known to be acceptable and available in the area.

*"Meat food products" means processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

846.470 Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following conditions exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to verify the acceptance of rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

846.471 Determination authority.

The following must make the determinations required in 846.470:

(a) The Chief Facilities Management Officer, Office of Facilities Management, for those items and services for which purchase authority has been assigned to the Office of Facilities.

(b) The Director, Veterans Canteen Service, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from VA supply sources).

(c) The DSPE for all other supplies, equipment, and services.

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

As provided in 846.472–1 and 846.472–2, management brokers or qualified fee or staff inspectors must conduct a final inspection of all repair programs upon completion. In addition, the broker or inspector must conduct intermediate or progress inspections on extensive or technical jobs as specified in the contract.

846.472–1 Repairs of $1,000 or less.

(a) Generally, the management broker must make any required inspections for repairs of $1,000 or less. A qualified fee or staff inspector must make any required inspection for repairs of $1,000 or less if the contracting officer:

(1) Has not assigned the property to a management broker; or,

(2) Has determined that the nature of the repairs requires supervision by a technician.

(b) There is no form prescribed for inspection of repairs of $1,000 or less, but the inspector may use VA Form 26–1839, Compliance Inspection Report. Regardless of the form in which the report is submitted, the inspector must identify the contractor, property, and the repair program and provide sufficient detail to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472–2 Repairs in excess of $1,000.

(a) A qualified fee or staff inspector must make the final inspection and any intermediate or progress inspections on repairs exceeding $1,000.

(b) The inspector must make the report of inspection on VA Form 26–1839, Compliance Inspection Report. The inspector must identify the property, contractor, and repair program and provide sufficient detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the terms of the contract. The inspector must itemize any deficiencies and explain the deficiencies in detail.

Subpart 846.7—Warranties

846.710 Contract clauses.

The contracting officer shall insert the clause at FAR 52.246–21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

846.710–70 Special warranties.

The contracting officer shall insert the clause at 852.246–74, Special Warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty of Construction.

846.710–71 Warranty for construction—guarantee period services.

The contracting officer shall insert the clause at 852.246–75, Warranty of Construction " Guarantee Period Services, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty of Construction, and that also include guarantee period services.

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

Sec.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 847.3—Transportation In Supply Contracts

847.303 Standard delivery terms and contract clauses.

847.303–1 F.o.b. origin.

Shipments falling within this category must be shipped on a Bill of Lading, except as provided in 41 CFR 102–118.40. Contracting officers must comply with 41 CFR parts 102–117 and 102–118. Contact the Traffic Manager for assistance in determining when to issue the applicable bill of lading (VA Commercial Bill of Lading for domestic

use or Government Bill of Lading for international shipments and domestic off-shore shipments) and for all freight estimates.

847.303–70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice," under any of the following circumstances:

(1) When it is determined that an f.o.b. origin purchase or delivery order will have transportation charges that do not exceed $250 and the occasional exception does not exceed that amount by more than $50.

(2) Single parcel shipments via express, courier, small package, or similar carriers, regardless of shipping cost, if the shipped parcel weighs 70 pounds or less and does not exceed 108 inches in length and girth combined.

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed $250 per shipment.

(b) Orders issued on VA Form 90–2138, Orders for Supplies or Services, must identify shipping instructions on the reverse side of the form. When VA Form 90–2138 is not used, the vendor must do the following:

(1) Consistent with the terms of the contract, pack, mark, and prepare shipment in conformance with carrier requirements to protect the personal property and assure the lowest applicable transportation charge. Follow package specifications found in the National Motor Freight Classification 100 Series.

(2) Add transportation charges as a separate item on the invoice. The invoice must include the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Not prepay transportation charges on the order if such charges are expected to exceed $250. Ship collect and annotate the commercial bill of lading, "To be converted to VA Commercial Bill of Lading." Contact Traffic Manager for routing instructions and freight estimate.

(c) Each contracting officer is responsible for:

(1) Obtaining the most accurate estimate possible of transportation charges.

(2) Using the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When, in accordance with FAR Subpart 28,3 and FAR 47.102, a shipment must be insured or the value declared, the contracting officer will specifically instruct the vendor to do so on the order when a written order is used. If the order is oral, the vendor must annotate all copies of the purchase request to show that the insurance/declared value was specifically requested.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305–70 Potential destinations known but quantities unknown.

When the National Acquisition Center contracts with multiple bidders who will provide procured items directly to VA field installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each facility cannot be predetermined, the contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247–70 must be used in these instances.

847.306 Transportation factors in the evaluation of offers.

847.306–70 Transportation payment and audit.

Transportation payments are audited by the Traffic Manager to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102–118.

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 849.1—General Principles

849.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a terminated contract, the contracting officer must do the following:

(1) Immediately discontinue all negotiations.

(2) Submit all of the pertinent facts necessary to support the suspicions to either of the following:

(i) The DSPE.

(ii) The Chief Facilities Management Officer, in the case of contracting officers from the Office of Facilities Management.

(3) Follow procedures as provided in 809.406–3 and 809.407–3.

(b) The DSPE or the Chief Facilities Management Officer, Office of Facilities Management, must review the submission and fully develop the facts.

(c) If the evidence indicates fraud or other criminal conduct, the DSPE or the Chief Facilities Management Officer, Office of Facilities Management, must forward the submission with recommendations through channels (to include OGC, if appropriate), to the Office of the Inspector General for referral to the Department of Justice.

(d) The DSPE or the Chief Facilities Management Officer, Office of Facilities Management, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(e) VA will not initiate a collection, recovery or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of the Inspector General.

(f) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

849.111 Review of proposed settlements.

849.111–70 Required review.

(a) FAR 49.111 requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract that involve the expenditure of $100,000 or more of Government funds to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, for technical and legal review (see 801.602–72(i)). Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical and legal review. The legal review of contracts awarded by or on behalf of the VA Office of Inspector General (OIG) will be conducted by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

849.111–71 Submission of information.

(a) The contracting officer shall submit to the appropriate Acquisition Program Management Division or Acquisition Assistance Team office a copy of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal.

(2) The audit report.

(3) The property disposed report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) The Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, will obtain the concurrence or comments of OGC prior to forwarding the review to the contracting officer, except that the concurrence or comments will be obtained from the Counselor to the Inspector General for contracts awarded by or on behalf of the VA Office of Inspector General.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.1—Instructions for Using Provisions and Clauses

Sec.

Subpart 852.2—Text of Provisions and Clauses

Authority: 38 U.S.C. 501 and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in FAR 52.101 (e.g., supplementary construction clauses under Part 836 are numbered 852.236–71, 852.236–72, etc.).

852.102 Incorporating provisions and clauses.

(a) As authorized by FAR 52.102(c), any 48 CFR Chapter 8 (VAAR) provision or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), contracting officers shall insert the provision found at 852.252–70, Solicitation Provisions or Clauses Incorporated by Reference, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert the title of the provision or clause and the paragraph that requires completion in full text in the quotation, solicitation, or contract. The balance of the provision or clause may be incorporated by reference.

(c) When one or more FAR or 48 CFR Chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the

quotation or solicitation the provision found at FAR 52.252–1, Solicitation Provisions Incorporated by Reference.

(d) When one or more FAR or 48 CFR Chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at FAR 52.252–2, Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: *http://www.arnet.gov/far/.*

(f) If one or more 48 CFR Chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: *http://www1.va.gov/oamm/vaar/vaarpdf.htm.*

Subpart 852.2—Texts of Provisions and Clauses

852.203–70 Commercial advertising.

As prescribed in 803.570–2, insert the following clause:

Commercial Advertising (Date)

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of Clause)

852.203–71 Display of Department of Veterans Affairs hotline poster.

As prescribed in 803.7001, insert the following clause:

Display of Department of Veterans Affairs Hotline Poster (Dec 1992)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under Department of Veterans Affairs contracts, Department of Veterans Affairs Hotline posters prepared by the Department of Veterans Affairs Office of Inspector General.

(b) Department of Veterans Affairs Hotline posters may be obtained from the Department of Veterans Affairs Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043–4647.

(c) The Contractor need not comply with paragraph (a) above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of Clause)

852.207–70 Report of employment under commercial activities.

As prescribed in 807.304–77 and 873.110, the following clause will be included in A–76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151–8153 which may result in conversion, from in-house to contract performance, of work currently being performed by VA personnel:

Report of Employment Under Commercial Activities (Date)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal personnel the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.*

(1) *Adversely affected Federal personnel* means:

(i) Permanent Federal personnel who are assigned to the government commercial activity, or

(ii) Federal personnel who are identified for release from their competitive levels or separated as a result of the contract.

(2) *Employment openings* means position vacancies created by this contract that the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award. The term includes positions within a 50-mile radius of the commercial activity that indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) *Contract start date* means the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 calendar days after the contract start date, no person other than adversely affected Federal personnel on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal personnel identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal personnel on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than 5 working days after contract award, the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits,

(ii) Sufficient job application forms for adversely affected Federal personnel.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal personnel offered an employment opening,

(ii) The date the offer was made,

(iii) A brief description of the position,

(iv) The date of acceptance of the offer and the effective date of employment,

(v) The date of rejection of the offer, if applicable, and the salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal personnel who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 calendar days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within 5 working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal personnel exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected Federal personnel to other Federal positions.

(3) For a period of up to 90 calendar days after the contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal personnel reflecting personnel who were recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualifications determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal personnel for any employment openings. However, adversely affected

Federal personnel who held jobs in the Government commercial activity that directly correspond to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal personnel for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relating to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities, or persons with disabilities.

(h) *Penalty for noncompliance.* Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.

(End of Clause)

852.209–70 Organizational conflicts of interest.

As prescribed in 809.507–1(b), insert the following provision:

Organizational Conflicts of Interest (Date)

(a) It is in the best interest of the Government to avoid situations which might create an organizational conflict of interest or where the offeror's performance of work under the contract may provide the contractor with an unfair competitive advantage. The term "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or person has an unfair competitive advantage.

(b) The offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the contracting officer, the contracting officer may determine that an organizational conflicts of interest exists which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the contracting officer finds that it is in the best interest of the United States to award the contract, the contracting officer shall request a waiver in accordance with FAR 9.503 and 48 CFR 809.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Provision)

852.211–70 Service data manuals.

(a) As prescribed in 811.107(a), insert the following clause:

Service Data Manuals (Nov 1984)

(a) The successful bidder will supply operation/maintenance (service data) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his/her responsibility in supplying the technical data called for therein.

(b) *Title Page and Front Matter.* The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustrations and a frontispiece (photograph or line drawing) depicting the equipment.

(c) *Section I, General Description.* This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) *Section II, Installation.* Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) *Section III, Operation.* Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein. When applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions that are software related.

(f) *Section IV, Principles of Operation.* This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by

technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) *Section V, Maintenance.* The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficient data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) *Section VI, Replacement Parts List.* The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) *Section VII, Drawings.* Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or productions sketches.

(End of Clause)

Alternate I (Date). If the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, insert the following paragraph:

(j) *Initial purchase.* The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.211–70(a) to the Service and Reclamation Division, Hines, IL. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.211–70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of Clause)

(b) As prescribed in 811.107(b), insert the following clause:

Service Data Manuals, Mechanical Equipment (Date)

The contractor agrees to furnish two hard copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of Clause)

852.211–71 Special notice.

As prescribed in 870.112, insert the following provision:

Special Notice (Date)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature that qualifies the offer will require rejection of the offer. However, within 5 days after award of contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements. The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment being proposed. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefore. If the equipment is disapproved by the Government, the contractor will be subject to action under the Default or Termination for Cause provision of this contract. However, prior to default or termination for cause action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of Provision)

852.211–72 Technical industry standards.

As prescribed in 811.103–70, insert the following provision:

Technical Industry Standards (Date)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the [ ]* and [ ]* as to [ ]**. The successful bidder or offeror will be required to submit proof that the item(s) he/she furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. Proof may also be furnished in the form of a certificate from one of the above listed organizations certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of Provision)

**Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.*

***Insert pertinent standards, i.e., fire and casualty, safety and fire protection, etc.*

852.211–73 Brand name or equal.

As prescribed in 811.104–71, insert the following clause:

Brand Name or Equal (Date)

(Note: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation or Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information that is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to:

(i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and

(ii) Establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall:

(i) Include in his/her bid a clear description of such proposed modifications, and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of Clause)

852.211–74 Liquidated damages.

As prescribed in 811.503 and 836.206, the contracting officer may insert the following clause when appropriate:

Liquidated Damages (Date)

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of Clause)

852.211–75 Product specifications.

As prescribed in 811.204, insert the following the following clause:

Product Specifications (Date)

The products offered under this solicitation shall be type _____, grade _____, in accordance with [type of specification] No. _____, dated _____ and amendment _____ dated _____, except for paragraphs _____ and ___, _____ which are amended as follows: [*List any amendments to the specifications*]

(End of Clause)

852.214–70 Caution to bidders—bid envelopes.

As provided in 814.201–6(a), the following provision will be included in all invitations for bid:

Caution to Bidders—Bid Envelopes (Date)

It is the responsibility of each bidder to take all necessary precautions, including the use of proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, use any suitable envelope, identified by the invitation number and bid opening time and date. If an Optional Form (OF) 17, Sealed Bid Label, is furnished with this invitation in lieu of a bid envelope, the bidder is advised to complete and affix the OF 17 to the lower left corner of the envelope used in submitting the bid.

(End of Provision)

852.214–71 Restrictions on alternate item(s).

As prescribed in 814.201–6(b)(1), insert the following provision:

Restrictions on Alternate Item(s) (Date)

Bids on [ ]* will be considered only if acceptable bids on [ ]** are not received or do not satisfy the total requirement.

(End of Provision)

**Contracting officer will insert an alternate item that is considered acceptable.*

***Contracting officer will insert the required item and item number.*

852–214–72 Alternate item(s).

As prescribed in 814.201–6(b)(2), insert the following provision:

Alternate Item(s) (Date)

Bids on [ ]* will be given equal consideration along with bids on [ ]** and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of [ ].**

(End of Provision)

**Contracting officer will insert an alternate item that is considered acceptable.*

***Contracting officer will insert the required item and item number.*

852.214–73 Alternate packaging and packing.

As prescribed in 814.201–6(b)(3), insert the following provision:

Alternate Packaging and Packing (Date)

The bidders offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be

made on a common denominator such as per ounce, per pound, etc., basis.

(End of Provision)

852.214–74 Bid samples.

As prescribed in 814.201–6(c), insert the following provision:

Bid Samples (Date)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all changes pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of Provision)

852.216–70 Estimated quantities.

As prescribed in 816.504(a), insert the following clause:

Estimated Quantities (Apr 1984)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

Alternate I (APR 1984). As prescribed in 816.504(b), insert the following clause:

Estimated Quantities (Apr 1984)

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

Alternate II (APR 1984). As prescribed in 816.504(c), insert the following clause:

Estimated Quantities (Apr 1984)

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

Alternate III (JUL 1989). As prescribed in 816.504(a), insert the following clause:

Estimated Quantities (Jul 1989)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

852.222–70 Contract Work-Hours and Safety Standards Act—nursing home care contract supplement.

As prescribed in 822.305, for nursing home care requirements, insert the following clause:

Contract Work Hours and Safety Standard Act—Nursing Home Care Contract Supplement (Date)

The following exemption to FAR clause 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract:

A Contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), provided:

(a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(c) Employees receive overtime compensation at a rate no less than 1½ times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

(d) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

852.228–70 Bond premium adjustment.

As prescribed in 828.106–70, insert the following clause:

Bond Premium Adjustment (Apr 1984)

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

852.228–71 Indemnification and insurance.

As prescribed in 828.306, insert the following clause:

Indemnification and Insurance (Date)

(a) *Indemnification.* The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servant, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may

be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workmen's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of Clause)

852.229–70 Sales or use taxes.

As prescribed in 829.302–70, insert the following provision:

Sales Or Use Taxes (Date)

This clause replaces paragraph (k) of Federal Acquisition Regulation clause 52.212–4, Contract Terms and Conditions—Commercial Items. The articles listed in this solicitation will be purchased from the personal funds of patients and prices submitted herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this solicitation.

(End of Clause)

852.229–71 [Reserved].

852.233–70 Protest Content/Alternative Dispute Resolution.

As prescribed in 833.106, insert the following provision:

Protest Content/Alternative Dispute Resolution (Date)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. The Department of Veterans Affairs Board of Contract Appeals (VABCA) is an independent and neutral entity within the Department of Veterans Affairs and is available to serve as the third party neutral (Neutral) for bid protests. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of Provision)

852.233–71 Alternate Protest Procedure.

As prescribed in 833.106, insert the following provision:

Alternate Protest Procedure (Jan 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW., Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of Provision)

852.236–70 [Reserved].

852.236–71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

Specifications and Drawings for Construction (Jul 2002)

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236–21 is supplemented as follows:

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of Clause)

852.236–72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

Performance of Work by the Contractor (Jul 2002)

The clause entitled "Performance of Work by the Contractor" in FAR 52.236–1 is supplemented as follows:

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by the contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments Under Fixed-Price Construction Contracts

clause of the contract, a statement designating the branch or branches of contract work to be performed with his /her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236–1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236–1.

(End of Clause)

Alternate I (Date). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

852.236–73 [Reserved].

852.236–74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

Inspection of Construction (Jul 2002)

The clause entitled "Inspection of Construction" in FAR 52.246–12 is supplemented as follows:

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of Clause)

852.236–75 [Reserved].

852.236–76 Correspondence.

As prescribed in 836.570, insert the following clause:

Correspondence (Apr 1984)

All correspondence relative to this contract shall bear the Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of Clause)

852.236–77 Reference to "standards".

As prescribed in 836.571, insert the following clause:

Reference to "Standards" (Jul 2002)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in the specifications.

(End of Clause)

852.236–78 Government supervision.

As prescribed in 836.572, insert the following clause:

Government Supervision (Apr 1984)

(a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may, by written direction, make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of Clause)

852.236–79 Daily report of workers and material.

As prescribed in 836.573, insert the following clause:

Daily Report of Workers and Material (Apr 1984)

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/ forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work that they perform, such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

852.236–80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

Subcontracts and Work Coordination (Apr 1984)

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to

settle any differences between the contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of Clause)

Alternate I (JUL 2002). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

852.236–81 [Reserved].

852.236–82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)."

Payments Under Fixed-Price Construction Contracts (Apr 1984)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232–5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many sub-branches as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the sub-branches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed in the table in this paragraph (b)(5). The percentages listed below are proportions of the cost listed in the contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program that shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236–83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)."

Payments Under Fixed-Price Construction Contracts (Jul 2002)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232–5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where the performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other

information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this section. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CMP cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236–84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

Schedule of Work Progress (Nov 1984)

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the

installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of Clause)

852.236–85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

Supplementary Labor Standards Provisions (Apr 1984)

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH–347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH–347, and in addition be accompanied by Department of Labor Form WH–348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of Clause)

852.236–86 Worker's Compensation.

As prescribed in 836.577, insert the following clause:

Worker's Compensation (Date)

Public Law 107–217 (40 U.S.C. 3172) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

852.236–87 Accident prevention.

As prescribed in 836.513, insert the following clause:

Accident Prevention (Sep 1993)

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236–13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of Clause)

852.236–88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

Contract Changes—Supplement (Jul 2002)

The clauses entitled "Changes" in FAR 52.243–4 and "Differing Site Conditions" in FAR 52.236–2 are supplemented as follows:

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over $500,000.

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.403, the cost or pricing data shall be submitted in accordance with FAR 15.403–5.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal, which includes the information required by paragraph (a)(1), for cost of changes in work within 30 calendar days.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (a)(1) or (a)(2) of this clause is not received within 30 calendar days or if agreement has not been reached.

(4) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing $500,000 or less:

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data or information other than cost or pricing data are required under FAR 15.403, the data shall be submitted in accordance with FAR 15.403–5. No itemized breakdown will be required for proposals amounting to less than $1,000.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit within 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (b)(1) or (b)(2) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(4) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a

declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first $20,000; 7½ percent overhead and 7½ percent profit on the next $30,000; 5 percent overhead and 5 percent profit on balance over $50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(5) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first $20,000; 7½ percent fee on the next $30,000; and 5 percent fee on balance over $50,000.

(6) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(7) Where the contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

(8) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(9) Cost of Federal Old Age Benefit (Social Security) tax and of Worker's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractors' proposals.

(10) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefore. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the contractor's overhead and/or fee percentage.

(11) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

852.236–89 Buy American Act.

As prescribed in Table 825.1102, insert the following clause:

Buy American Act (Date)

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials," FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with Subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

Alternate I (Date). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials under Trade Agreements," FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for designated country construction material as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than designated country construction material.

Alternate II (Date). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials under Trade Agreements," FAR 52.225–11 and its Alternate I.

(b) The restrictions contained in this clause 852.236–89 are waived for World Trade Organization (WTO) Government Procurement Agreement (GPO) country, Australian, Chilean, least developed country, or Caribbean Basin country construction material, as defined in FAR 52.225–11 and its Alternate I. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than WTO GPO country, Australian, Chilean, least developed country, or Caribbean Basin country construction material.

852.236–90 Restriction on submission and use of equal products.

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government's minimum needs and the Department of Veterans Affairs will not allow the submission of "equal" products:

Restriction on Submission and Use of Equal Products (Nov 1986)

The clause applies to the following items:

_____

_____

_____

Notwithstanding the "Material and Workmanship" clause of this contract, FAR 52.236–5(a), nor any other

contractual provision, "equal" products will not be considered by the Department of Veterans Affairs and may not be used.

(End of Clause)

852.236–91 Special notes.

As prescribed in 836.579, insert the following clause:

Special Notes (Jul 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration, or repair of buildings, structures, and communications facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted, the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their intended use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10-year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

852.237–7 Indemnification and Medical Liability Insurance.

As prescribed in 837.403, insert the following clause:

Indemnification and Medical Liability Insurance (Oct 1996)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: Contracting Officer insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

852.237–70 Contractor responsibilities.

As prescribed in 837.110, insert the following clause:

Contractor Responsibilities (Apr 1984)

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she

shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees' fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of [ ]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

(End of Clause)

852.246–70 Guarantee.

As prescribed in 846.302–70, insert the following clause:

Guarantee (Date)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of [ ],[1] said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.[2]

(End of Clause)

Alternate I (Date). If it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to:

(1) Guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems); or

(2) Require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts; the clause used will be revised to be compatible with such policy.

852.246–71 Inspection.

As prescribed in 846.302–71(a), insert the following clause:

Inspection (Date)

Rejected goods will be held subject to contractors order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the contractor's account.

(End of Clause)

Alternate I (Date). As provided in 846.302–71(b), insert the following clause:

Inspection (Date)

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of Clause)

852.246–72 Frozen processed foods.

As prescribed in 846.302–72, insert the following clause:

Frozen Processed Foods (Date)

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of Clause)

852.246–73 Noncompliance with packaging, packing, and/or marking requirements.

As prescribed in 846.302–73, insert the following clause:

Noncompliance With Packaging, Packing and/or Marking Requirements (Date)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of Clause)

852.246–74 Special warranties.

As prescribed in 846.710–70, insert the following clause:

Special Warranties (Date)

The clause entitled "Warranty of Construction" in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

(End of Clause)

852.246–75 Warranty for construction—guarantee period services.

As prescribed in 846.710–71, insert the following clause:

Warranty for Construction—Guarantee Period Services (Date)

The clause entitled "Warranty of Construction" in FAR 52.246–21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR 52.249–10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any

[1] Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2] The above clause will be modified to conform to standards of the industry involved.

increased costs incurred by the Government in completing the work.

(End of Clause)

852.247–70 Determining transportation costs for bid evaluation.

As prescribed in 847.305–70, insert the following provision:

Determining Transportation Costs for Bid Evaluation (Apr 1984)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

ANTICIPATED DEMAND

Area destination	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of Provision)

852.252–70 Solicitation provisions or clauses incorporated by reference.

As prescribed in 852.102(a), insert the following provision:

Solicitation Provisions or Clauses Incorporated by Reference (Date)

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in the provision at FAR 52.252–1, Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252–2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

[Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.]

(End of Provision)

852.270–1 Representatives of contracting officers.

As prescribed in 801.603–70(d), insert the following provision:

Representatives of Contracting Officers (Date)

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of Provision)

852.270–2 Bread and bakery products—quantities.

As prescribed in 870.111–3, insert the following clause:

Bread and Bakery Products—Quantities (Date)

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of Clause)

852.270–3 Purchase of shellfish.

As prescribed in 870.111–3, insert the following clause:

Purchase of Shellfish (Apr 1984)

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of Clause)

852.271–70 Nondiscrimination in services provided to beneficiaries.

As prescribed in 837.110–70 and 871.212, insert the following provision:

Nondiscrimination in Services Provided to Beneficiaries (Date)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Provision)

852.271–71 [Reserved].

852.271–72 Time spent by counselee in counseling process.

As prescribed in 871.212, insert the following clause:

Time Spent by Counselee in Counseling Process (Apr 1984)

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of Clause)

852.271–73 Use and publication of counseling results.

As prescribed in 871.212, insert the following clause:

Use and Publication of Counseling Results (Date)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of Clause)

852.271–74 Inspection.

As prescribed in 871.212, insert the following clause:

Inspection (Date)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and examine the training facilities, the work of the veterans in training under this contract, and the records of these operations.

(End of Clause)

852.271–75 Extension of contract period.

As prescribed in 871.212, insert the following clause:

Extension of Contract Period (Apr 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of Clause)

852.273–70 Late offers.

As prescribed in 873.110(a), insert the following provision:

Late Offers (Jan 2003)

This provision replaces paragraph (f) of FAR provision 52.212–1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of Provision)

852.273–71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

Alternative Negotiation Techniques (Jan 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

852.273–72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

Alternative Evaluation (Jan 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—[*Contracting officer insert description of how the information may be viewed electronically or otherwise*]—. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

852.273–73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the contracting officer may insert a provision substantially as follows:

Evaluation—Health-Care Resources (Jan 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: —[*Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.*]—

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

852.273–74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

Award Without Exchanges (Jan 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

PART 853—FORMS

Sec.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

853.000 Scope of part.

This part prescribes VA forms for use in the acquisition of goods and services. It only identifies forms that are used

between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

Subpart 853.1—General

853.107 Obtaining forms.

The VA forms may be obtained from any VA contracting office or by requesting such forms from the Deputy Assistant Secretary for Acquisition and Material Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201–1 Contracting authority and responsibilities (SF 1402).

Standard Form (SF) 1402, Certificate of Appointment, is used in accordance with FAR 1.603–3, Appointment, to appoint VA contracting officers under VA's Contracting Officer Certification Program (see 801.690–6).

853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90–2138, Order for Supplies or Services, or 90–2138–ADP, Purchase Order for Supplies or Service, shall be used as indicated in 813.307. They will be used in lieu of but similar to OF 347, Order of Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record Authorization and Invoice for Outpatient Service.

(c) VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

(d) VA Form 10–2421, Prosthetics Authorization and Items and Services, will be used for indicated procurements not to exceed $300 as prescribed in 813.307.

853.215 Contracting by negotiation.

853.215–70 VA Form 10–1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.

VA Form 10–1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA, will be used for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236–70 VA Form 10–6298, Architect-Engineer Fee Proposal.

VA Form 10–6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606–71.

853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.

853.271–1 Loan Guaranty Program (VA Forms 26–6724 and 26–1839).

(a) VA Form 26–6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26–1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

853.271–2 Education Programs.

To obtain education or rehabilitation services, contracting officers may use an individual written contract or VA Form 28–1905, Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107. VA forms may also be available on the Web at *http://www.va.gov/vaforms/*.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 870—SPECIAL PROCUREMENT CONTROLS

Subpart 870.1—Controls

Sec.

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 870.1—Controls

870.111 Subsistence.

870.111–3 Contract clauses.

(a) The contracting officer shall include the clause at 852.270–2, Bread and Bakery Products—Quantities, in solicitations and contracts for bread and bakery products.

(b) The contracting officer shall include the clause at 852.270–3, Purchase of Shellfish, in solicitations and contracts for shellfish.

870.111–5 Frozen processed food products.

(a) The following frozen processed food products must have a label complying with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), which requires that all ingredients be listed according to the order of their predominance:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen, processed food products that contain fish or fish products.

(3) Frozen bakery products.

(b) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the supervision of the U.S. Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

(c) All procured frozen, processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants operated under the supervision of the U.S. Department of Commerce (DOC). The products listed in DOC's publication, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, DOC. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or

DOC seal indicating compliance with DOC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the condition in paragraph (c)(1) of this section was not met (no seal), the shipment may be lot inspected by the DOC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(d) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

870.112 Telecommunications equipment.

(a) The contracting officer must include the clause at 852.211–71, Special Notice, in solicitations, including those for construction, that are based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in VA manual MP–6, Part VIII, (available at any VA facility).

(b) The Telecommunications Support Service must review and approve the descriptive literature required by the clause in 852.211–71, Special Notice, furnished by the contractor after award, before delivery or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it, together with a copy of the contract, the formal specification, or the detailed purchase description, to the DSPE.

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Before award, contracting officers will forward to the DSPE the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors before receiving Central Office's response.

(3) The solicitation must allow at least 30 calendar days for acceptance to allow sufficient time for the review required by this paragraph. (See FAR 52.214–16.)

870.113 Paid use of conference facilities.

When contracting for the use of conference facilities, contracting officers shall follow and comply with the Federal Travel Regulation, 41 CFR Part 301–74, Conference Planning, and shall document the contract file as specified therein, including documentation of efforts to locate Government-owned space and efforts to reduce costs.

870.115 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than Defense General Supply Center sources must meet requirements set forth by the National Sanitation Foundation.

(b) The contracting officer will accept an affixed National Sanitation Foundation label and/or documentation of the certification by National Sanitation Foundation from the contractor as evidence that the subject equipment meets sanitation standards issued by the National Sanitation Foundation.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

Subpart 871.1—Loan Guaranty and Direct Loan Programs

Sec.

Subpart 871.2—Vocational Rehabilitation and Employment Service

Authority: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Subpart 871.1—Loan Guaranty and Direct Loan Programs

871.100 Scope of subpart.

This subpart sets forth policy and procedures with respect to the loan guaranty and direct loan programs as they pertain to property management, including the acquisition, management, and disposition of property, real, personal, or mixed, that were secured by loans guaranteed, insured, or made under Title 38, U.S.C.

871.101 Policy.

All acquisitions for the repair and maintenance of VA property acquired under 38 U.S.C. Chapter 37 must be made in accordance with FAR Parts 14, 15, and 16, Parts 814, 815, and 816 of this chapter, and this subpart.

871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, VA Regional Offices, are authorized to approve a repair program for any VA property acquired under Chapter 37, Title 38, U.S.C., if the cost does not exceed $25,000. A repair program means the aggregate amount of the proposed contracts that are contemplated in a property analysis by the Loan Guaranty activity.

(b) In cases where the expenditure is known or estimated to exceed $25,000, the Loan Guaranty Officer, or his or her designee, must forward the request, together with the loan guaranty folder, to the Under Secretary for Benefits for approval.

(c) During the period when VA has assumed custody of the property from a holder and before its conveyance to VA under 38 CFR 36.4320, repairs not in excess of $3,500 are authorized, when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until VA acquired absolute title. In cases where the expenditure is known or estimated to exceed $3,500, the Loan Guaranty Officer, or his or her designee, must forward the request, together with the loan guarantee folder, to the Under Secretary for Benefits for approval.

(d) The holder must not make repairs to a property when it has continued custody, except for emergency repairs not in excess of $500, unless the holder gives adequate notice to the Director, Regional Office. Emergency repairs means immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, including the initial cleanup of the property to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, when the property is assigned, to incur expenses for fuel and utilities or other recurring items that VA is required to furnish to its tenants or are required to maintain the property if the following conditions are met:

(1) Advance blanket authorization to a management broker must be limited to repairs not in excess of $500 in any transaction.

(2) The management broker must either submit receipts with an invoice or maintain receipts for inspection.

(3) Expenditures in excess of $500 require prior approval of the Director, Regional Office, having jurisdiction of the property.

(4) The management broker must aggregate the costs of repairs when determining whether prior approval is required.

871.104 Qualification of bidders.

(a) Bidders must be qualified in accordance with procedures outlined in FAR Subpart 9.1 and Subpart 809.1 of this chapter.

(b) Management brokers are not acceptable bidders for a repair contract due to their close association on a fee basis with VA. This restriction also applies to any contracting firm in which the management broker has an interest and in which it could be presumed that the firm would have an advantage over the other bidders. This does not preclude the management broker from performing routine recurring maintenance or minor repairs. When seeking payment for maintenance or repairs, the management broker must establish that any charges are not in excess of the prevailing fees for similar services in the area.

871.106 Lien waivers.

(a) In a contract for $2,500 or more, the contracting officer must include the following requirements:

(1) The contractor must sign a formal release in full or a lien waiver before payment may be made.

(2) The contractor must notify the Director, Regional Office, of any subcontracts for services or materials in excess of $2,500. Each subcontractor must sign the release or waiver jointly with the prime contractor or exercise a release or waiver in the subcontractor's own name.

(b) The contracting officer must not pay the contractor unless the release or waiver accompanies the contractor's invoice.

(c) Before any authorized partial payment, the contractor must execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver must be prepared in accordance with local law and must be in a form acceptable to the District Counsel.

871.107 Stipulations against liens.

(a) In a contract for an amount less than $2,500, when determined necessary by the Director, Regional Office, the contracting officer may include the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) In a contract for $2,500 or more when there is doubt that the final responsibility of the contractor will provide maximum protection to the Government, the contracting officer must include any requirements that are available under local law. The contracting officer must obtain advice and approval of any contract stipulation or legal stipulations against liens from the District Counsel.

Subpart 871.2—Vocational Rehabilitation and Employment Service

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

(a) Contracts for training and rehabilitation services.

(b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31.

(c) Contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36 and 10 U.S.C. Chapters 106, 107, and 1606.

871.201 General.

871.201–1 Requirements for the use of contracts.

The VA negotiates contracts for tuition, fees, books, supplies, and other allowable expenses incurred by an institution, training establishment, or employer for the training and rehabilitation of eligible veterans under 38 U.S.C. Chapter 31 when the following services are provided:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses that are furnished at the request of the VA.* Special services or courses are those services or courses that VA requests that are over and above those the institution customarily provides for similarly circumstanced non-veterans and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

871.201–2 Requirements when contracts are not required.

(a) For the purpose of this section a contract is not required when all tuition, fees, and charges for books, supplies, or services necessary to train or educate an eligible veteran under 38 U.S.C. Chapter 31 are published in the school catalog or other published document.

(b) When a contract is not required, the Vocational Rehabilitation and Employment Officer must obtain a signed statement of charges from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy, and other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 28–1905, Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification Status, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges nonveterans pay or that are published in the school catalog or other published document.

871.201–3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Veterans Health Administration to which the veteran may be entitled. No certificate of eligibility is required from the Veterans Health Administration before the veteran may be provided such services.

871.201–4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational institution before the enrollment of eligible veterans for training.

871.202 Marking and release of supplies.

The educational institution or training establishment is not required to mark

supplies to indicate ownership by the United States. Supplies are considered to be the property of the trainee at the time they are furnished.

871.203 Renewals or supplements to contracts.

Except for contracts for educational and vocational counseling, the contracting office may renew contracts from year to year by completing a renewal agreement no later than 30 days before the expiration of the contract. There must be no change in the schedule of provisions in the original contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year to year.

871.204 Guaranteed payment.

A contracting officer may not award a contract or agreement to any institution or training establishment that requires VA to pay a minimum charge, or to enroll a minimum number of participants per quarter, semester, term, course, or other period.

871.205 Proration of charges.

A contract must include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with Part 813.

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as registration fee, etc.

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

871.208 Rehabilitation facilities.

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

871.210 Correspondence courses.

Contracts with institutions for correspondence courses must provide for the following:

(a) Major changes in courses or course material are not binding on the VA until a supplemental agreement to the contract is negotiated.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material, such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. The institution must place such minor changes and revisions on file with the contracting officer at the time of the change or revision.

(c) Trainees must be provided with prompt and adequate lessons service and, unless otherwise specified in the contract, must be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled non-veteran students.

(d) That all lessons must be adequately serviced on an individual basis. Grouping of lessons into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination that is adequate in terms of lesson content.

(f) The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. Chapter 31 and must not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges must not be in excess of those charged nonveterans.

(h) Payment must be made on a lesson-completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment must be made only once for each lesson even though it is necessary to service a lesson more than once.

871.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in VA contracts may be directed to the institutions offering the courses.

871.212 Contract clauses.

Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

(a) 852.271–70 Nondiscrimination in Services Provided to Beneficiaries.

(b) 852.271–72 Time Spent by Counselee in Counseling Process.

(c) 852.271–73 Use and Publication of Counseling Results.

(d) 852.271–74 Inspection.

(e) 852.271–75 Extension of Contract Period.

PART 872—[RESERVED]

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.

Authority: 38 U.S.C. 501 and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR differs from the procedures contained in this part, this part shall apply. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR. (38 U.S.C. 8153)

873.102 Definitions.

Commercial service means a service, except construction exceeding $2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8152)

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space. (38 U.S.C. 8152)

873.103 Priority sources.

Without regard to FAR 8.002(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR Subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. (38 U.S.C. 8153)

873.104 Competition requirements.

(a) Without regard to FAR Part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis. (38 U.S.C. 8153)

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6, is not required. (38 U.S.C. 8153)

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted. (38 U.S.C. 8153)

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6. (38 U.S.C. 8153)

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business

advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service. (38 U.S.C. 8153)

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108. (38 U.S.C. 8153)

(d) In lieu of the requirements of FAR Part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR Part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft Requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., Internet); and

(11) Use of the Central Contractor Registration (CCR) (*https://www.bpn.gov/ccrinq/scripts/search.asp*) and the "Advanced Search" feature on VetBiz Vendor Information Pages (*http://vip.vetbiz.gov/search/default.asp*) to search for vendors. (38 U.S.C. 8153)

873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502–2, and 19.502–3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless the contracting officer makes a determination in writing that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding $5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding $5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final. (38 U.S.C. 8153)

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR Part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting

officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873. (38 U.S.C. 8153)

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873. (38 U.S.C. 8153)

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 15.406–3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Without regard to FAR 14.404–1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government. (38 U.S.C. 8153)

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273–70, Late Offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative Negotiation Techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273–72, Alternative Evaluation, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision 52.212–2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273–74, Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the clauses at FAR 52.207–3, Right of First Refusal of Employment, and at 852.207–70, Report of Employment Under Commercial Activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to

ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR Part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* FAR Part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* If the procedures of FAR Parts 12, 13, and 15 differ from the procedures of this part, the procedures of this part shall govern. (38 U.S.C. 8153)

(d) *Multiphase acquisition technique.* (1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition. (38 U.S.C. 8153)

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104). (38 U.S.C. 8153)

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (*e.g.*, perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR Parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)

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AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is publishing these regulations on the Alaska Native reindeer industry to implement the provisions of the Reindeer Act of 1937, as amended.

These regulations also apply to non-Natives who own, or want to own, reindeer in Alaska. These regulations provide Alaska Native reindeer owners, government officials, and those doing business with them, with procedures and policies for administration of the reindeer industry in Alaska.

DATES: *Effective Date:* These regulations take effect on February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Warren Eastland, Wildlife Biologist, Alaska Region, Bureau of Indian Affairs, P.O. Box 25520 (3rd Floor, Federal Building), Juneau, Alaska 99802–5520. Voice (907) 586–7321, Fax (907) 586–7120.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500–500n). The Secretary has delegated this authority to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Background

The Reindeer Act of 1937 (50 Stat. 900; 25 U.S.C. 500–500n) authorizes and directs the Secretary of the Interior to organize and manage the reindeer industry or business in Alaska in such a manner as to establish and maintain a complete and self-sustaining economy for the natives of Alaska, and to encourage and develop Alaska Native activity and responsibility in all branches of the industry or business (25 U.S.C. 500 and 500f). To preserve the Native character of the reindeer industry in Alaska, the sale or transfer of Native or government owned reindeer or reindeer products is allowed only under regulations to be developed by the Secretary (25 U.S.C. 500i).

The proposed regulation was published in the **Federal Register** on March 11, 2004 (69 FR 11784) with a 90-day comment period expiring on June 9, 2004. Letters calling specific attention to the proposed regulations, and the opportunity to comment, were sent to all known Alaska Native reindeer owners, herders, and their organizations. In addition to the solicitation of written comments, meetings were also held in Nome, Mekoryuk, Stebbins, and Anchorage locations where it would be convenient for reindeer owners and herders to attend. In addition to consideration of written public comments received, contact was made with the Department of the Interior, Office of Hearings and Appeals (OHA), to assure that probate-related provisions of the regulations would conform to the views and practices of the OHA. Suggestions from the OHA were received and incorporated into the relevant provisions of this final rule.

On October 26, 2004, several months after the close of the formal comment period, various interested individuals met with Warren Eastland, the designated Departmental contact, and urged that the comment period be re-opened, and the opportunity for comment extended. Concerns expressed in timely-received written comments were reiterated, but no new substantive points were articulated that would indicate the need for additional input. Accordingly, these regulations are being published in final form without further delay, although the possibility that a need for clarifying amendments will be identified at a future date always remains.

Response to Comments

Only two sets of written comments were received, but they were both reasonably comprehensive in scope. Besides commenting on the text of the proposed regulatory provisions themselves, one set of comments addressed several procedural points, and matters touched upon in the summary, background, and procedural discussions accompanying publication of the draft regulations. One comment expressed disagreement with the announced suspension of the reindeer loan program formerly administered by the BIA. It was suggested that the preamble to the final rule should clarify that the failure to publish any regulations concerning the loan program does not indicate that the program has been permanently abolished. We agree that if the resources were available it would still be legally authorized under the Reindeer Act to reestablish a reindeer loan program similar to or different from the one previously conducted. However, since the funds to operate such a program are not presently available, we see no need to address the subject in this final rule.

A second comment takes issue with the statement provided, to comply with Executive Order 12866, to the effect that there are no "entitlements, grants, fees, loan programs, or other obligations" associated with the administration of the Reindeer Act of 1937. Although the commenter asserts that Federal funding to support the reindeer industry is an entitlement of industry participants, the BIA declines to revise its original statement, because future discretionary provision of support, while authorized, is not legally mandated. Another comment challenges the statement under the same Executive Order, to the effect that the proposed rule "does not raise novel legal issues." Although the commenter asserts that the alleged trust status of Alaska reindeer constitutes a novel legal issue, the BIA does not believe there is anything novel about its interpretation of property law as reflected in this final rule, and therefore declines to revise its statement.

Commenters also questioned the statement accompanying the publication of the draft rules, under the heading "Government to Government Relationship With Tribes," to the effect that the proposed regulations have no potential effects on tribes because the owners of Alaska reindeer are "only individuals or groups of individuals outside of tribal governments." The commenters point out that several reindeer herds are owned by tribal governments. The BIA acknowledges this factual oversight, and corrects it in this final rule. However, the conclusion that the rule has minimal potential effect on tribes remains generally accurate, since tribes' rights, powers, and ownership options are not significantly prescribed by the regulations, except to the limited extent that a tribe's transfer of live Alaskan reindeer to a non-Native is regulated, albeit to no greater extent than already required by the Reindeer Act itself.

Comments relating substantively to the specific sections of the proposed regulations are addressed in the following discussion. Sections for which no changes or comments were made are omitted from the analysis.

Section-by-Section Analysis

Section 243.1 What Is the Purpose of This Part?

One commenter suggested changing the phrase "reindeer industry *or* business" to "reindeer industry *and* business." This change has been made.

Section 243.2 What Terms Do I Need To Know?

One commenter suggested changing the definition of *"Alaskan reindeer"* to cover all animals not covered by the definition of *"Imported reindeer."* Such a change would allow Alaska Natives to expand their holdings of animals defined as Alaskan reindeer other than by in-state animal reproduction. We have rejected this suggestion because we think it is clear that the Reindeer Act was intended only to create a special class of animals which are descended from those present in Alaska when the Act was passed. However, it is recognized that two definitions in the proposed regulations did not necessarily cover all reindeer that might be found in the state, and the definition of *"Imported reindeer"* is therefore revised by dropping the limiting reference to importation by a non-Native, and by omitting the second sentence of the definition in the draft regulations, which made a distinction based on genealogy of animals brought into the state after promulgation of the regulations. This distinction is omitted because it is considered to be too difficult to determine whether any given reindeer, which may be imported from any location in the world outside of Alaska, is or is not descended from animals present in Alaska in 1937 but later exported from the state. With these changes, the definition of *"Imported reindeer"* is expanded so that the two definitions together will encompass all reindeer that may be found within the state at any given time.

Section 243.4 Who Can Own or Possess Alaskan Reindeer?

One comment was received suggesting that issuance under paragraph (e) of a Special Use Permit for Public Display be limited to situations where the use would not be in direct competition with a similar activity by a Native owner of Alaska reindeer. Although a finding that the applicant's use is competitive with a Native owner's own display activities may be a factor in the denial of an application for a Special Use Permit for Public Display, it is not considered necessary to include an explicit reference to such a criterion in the text of the regulation.

Section 243.5 Who Can Own or Possess Imported Reindeer, and What Limitations Apply?

No comments were received regarding this provision. However, in the interest of clarity, the "owner" mentioned in line 5 of paragraph (c) has been changed to "the non-Native owner."

Section 243.6 Which Sales or Transfers Do Not Require a Permit?

One commenter observed that there was no logical need to limit the class of permit-free transfers between Alaska Natives or their organizations to transfers between "unrelated" persons or entities. This is a valid point, and in response we have omitted the word "unrelated" which appeared in the draft version of paragraph (b).

Section 243.7 How Can a Non-Native Acquire Live Reindeer?

To avoid possible confusion, we have adopted the suggestion that the term "shipped out" be substituted in place of the term "transferred" in the final line of paragraph (c) of the regulation.

Section 243.9 Who May Inherit Live Alaskan Reindeer and by What Means?

Several substantive points were raised by commenters or by the Office of Hearings and Appeals with respect to this regulation. For one thing, it was suggested that the implication in the draft regulation, to the effect that the Department of the Interior has probate jurisdiction over inheritance of Alaska reindeer, should be made explicit. This suggestion was adopted, and a new paragraph (c) has been added, including specific incorporation by reference of the governing probate regulations. It was also proposed that the authority and responsibility for preservation of Alaska reindeer after the owner's death and during the pendency of a probate proceeding be clarified. The added paragraph of the regulation also addresses this point.

Another recommendation received was that the time period allowed for a non-Native to dispose of an inherited interest in Alaska reindeer be expanded beyond the 30 days allowed in the draft regulation. This suggestion, though very reasonable and practical, was not adopted, because the text of 25 U.S.C. 500i explicitly provides for the 30-day time limit, and the regulation must conform to the underlying statutory provision.

Section 243.12 Are Alaskan Reindeer Trust Property Owned by the U.S. Government for the Benefit of Alaska Natives?

This is the section of the proposed regulations that generated by far the greatest level of interest and criticism. One comment received about this section recommended that it be deleted or substantially revised. Another comment argued that the section should explicitly provide that all Alaska reindeer are trust property. This argument overlooks the fact that only the non-Native owned portion of Alaska reindeer were acquired by the Federal Government pursuant to the 1937 Reindeer Act. It also places undue reliance on the internally contradictory language of previous reindeer loan agreements.

However, we have been persuaded to revise the caption and text of this provision, to more plainly describe the legal ownership status of different categories of reindeer, and to clarify that the program retains an element of trust, in the sense that the Federal Government continues to be obligated to carry out the purposes of the Reindeer Act, including enforcing the restrictions on alienation, retaining jurisdiction to determine inheritance of Alaska reindeer, and assuming responsibility for decedents' Alaskan reindeer pending such probate decisions.

Procedural Requirements

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The scale of reindeer herding in Alaska is such that the value of the entire industry, including animals and infrastructure, is less than $100 million.

(b) This rule will not create inconsistencies with other agencies' actions. The Bureau of Indian Affairs is the sole agency tasked with administration of the Reindeer Act of 1937.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, fees, loan programs or other obligations associated with the administration of the Reindeer Act of 1937.

(d) This rule will not raise novel legal or policy issues. This rule merely formalizes commonly accepted practice for the administration of the Bureau of Indian Affairs' responsibility under the Reindeer Act of 1937.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). The proposed regulations do not require any permitting or data gathering from Native reindeer owners, and only a very few (less than 6 per year) non-Natives who wish to acquire Alaskan reindeer will be affected, and then only by limited data gathering and not in an economic way.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $100 million.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. These regulations only affect the administration of the Reindeer Act of 1937 and do not affect the value of, or prices received for Alaskan reindeer.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The administration of the Reindeer Act allows Alaska Natives to compete, should they wish, with other nations' reindeer industries, and protects the industry from illegal competition from non-Natives.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The administration of the Reindeer Act does not affect any governmental agency, but clarifies for federally recognized tribes in Alaska, the regulatory requirements for Alaskan reindeer sales to Natives and non-Natives.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $100 million.

Takings Implications (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed regulations do not involve takings issues. They do clarify under what conditions non-Natives may acquire Alaskan reindeer, but do not affect the ownership of Alaskan reindeer by Natives, and are not expected to affect imported reindeer currently owned by non-Natives.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism assessment is not required. The proposed regulations do not involve any aspect of Federal-State relations.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed regulations do not involve court action, nor do they provide significant use of enforcement and judicial action.

Paperwork Reduction Act

This regulation does require an information collection under the Paperwork Reduction Act. The existing OMB approval was allowed to expire because there were not sufficient reindeer in the reindeer loan program to meet the minimum PRA transactions per year. The information required under the proposed regulations is limited to names and addresses of non-Natives who wish to possess Alaska reindeer and to reports of reindeer disposition and yearly reports and is required to obtain or retain a benefit, namely reindeer. The information is used to manage the program under the Reindeer Act. The reporting or application hourly burden varies from 5 minutes to 20 minutes, depending upon the kind of report or application used. The table below explains the collection activity.

Form	Time per form	Time × number of users	Estimate cost per form	Cost per form × number of users	Federal cost @ $32.75/hour
Special use permit display	10 minutes	10 × 2 = 20 minutes	$1.67	$3.34	$10.92
Reindeer sale permit	10 minutes	10 × 8 = 80 minutes	1.67	13.36	43.68
Annual report form	10 minutes	10 × 2 = 20 minutes	1.67	3.34	10.92
	5 minutes	5 × 8 = 40 minutes	0.84	6.72	21.84
Generic report	15–20 minutes	20 × 1 = 20 minutes	3.34	3.34	10.92
Subtotals					
Permit:		100 minutes		16.70	54.60
Report:		80 minutes		13.40	43.68
Totals		180 = 3 hours		30.10	98.28

Respondents may retain copies of the reports and applications submitted for their own records and to ensure that they have included all the information required, but there is no requirement for them to retain documents past the time of reporting or final disposition of the animals. Documentation has been prepared and submitted to the Desk Officer at OMB for review and approval of the information request.

The Bureau of Indian Affairs requests that interested person send their comments on this collection to the Information Collection Clearance Officer, 625 Herndon Parkway, Herndon, VA 20170. We are interested particularly in suggestions for reducing the burden.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The proposed regulations do not constitute any irretrievable commitment of resources, nor will they permit environmental activities that are not otherwise regulated. The proposed regulations are merely administrative matters pertaining to the Reindeer Act of 1937.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and Executive Order 13175, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Tribes' rights, powers, and ownership options are not affected by the regulations, except as already prescribed in the Reindeer Act itself. The restrictive measures contained affect only non-Natives.

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The proposed regulations pertain only to whom and under what conditions Alaskan reindeer may be owned. There are no energy issues involved.

List of Subjects in 25 CFR Part 243

Indians—Alaska Natives, Livestock—Reindeer.

Dated: November 23, 2005.

William A. Sinclair,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

■ For the reasons stated in the preamble, part 243 is added to chapter I of title 25 of the Code of Federal Regulations as set forth below.

PART 243—REINDEER IN ALASKA

Sec.

Authority: Sec. 12, 50 Stat. 902; 25 U.S.C. 500K.

§ 243.1 What is the purpose of this part?

The Department's policy is to encourage and develop the activity and responsibility of Alaska Natives in all branches of the reindeer industry and business in Alaska, and to preserve the Native character of that industry and business. This part contains requirements governing acquisition and transferring reindeer and reindeer products in Alaska.

§ 243.2 What terms do I need to know?

Act means the Reindeer Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500 *et seq.*), as amended.

Alaska Native means Eskimos, Indians, and Aleuts inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants currently living in Alaska.

Alaskan reindeer means:

(1) All reindeer descended from those present in Alaska at the time of passage of the Act; and

(2) Any caribou introduced into animal husbandry or that has joined a reindeer herd.

BIA means the Bureau of Indian Affairs within the United States Department of the Interior.

Designee means the person assigned by the Alaska Regional Director to administer the reindeer program.

Imported reindeer means reindeer brought into Alaska from any region outside of Alaska since passage of the Act.

Native reindeer organization means any corporation, association, or other organization, whether incorporated or not, composed solely of Alaska Natives, for the purpose of engaging in or promoting the reindeer industry.

Non-Native means a person who is not an Alaska Native.

Regional Director means the officer in charge of the Alaska Regional Office of the Bureau of Indian Affairs.

Reindeer products mean the meat, hide, antlers, or any other products derived from reindeer.

Transfer means the conveyance of ownership of reindeer or reindeer products, or any interest in them or interest in an Alaska Native reindeer organization, by any method.

We, us and *our* mean the Regional Director or the Director's designee.

§ 243.3 Delegation of authority

The Secretary of the Interior has delegated authority under the Act through the Assistant Secretary—Indian Affairs to the Alaska Regional Director of the Bureau of Indian Affairs. All claims of ownership of reindeer in Alaska, as required by the Act (section 500b), must be filed with the Regional Director or the Director's designee.

§ 243.4 Who can own or possess Alaskan reindeer?

(a) Only Alaska Natives, organizations of Alaska Natives, or the United States for the benefit of these Natives, can own Alaskan reindeer in Alaska.

(1) Any transfer not allowed by this part is not legal, and does not confer ownership or the right to keep Alaskan reindeer, reindeer products, or any interest in them.

(2) Anyone violating this part will forfeit their reindeer or reindeer products to the Federal Government.

(b) An Alaska Native or a Native reindeer organization may transfer reindeer that they own to other Alaska Natives or Native reindeer organizations without restriction, except as provided in this part.

(c) We may maintain reindeer for research projects, so long as the purpose of the research benefits the Native reindeer industry. We retain title to these reindeer and will determine their eventual disposition.

(d) A non-Native manager of Alaskan reindeer must, by the last day of September each year:

(1) Provide us a copy of the contract with the Native reindeer owner; and

(2) Provide us a written report of all Alaskan reindeer kept, born, died or transferred.

(e) We may permit possession of a limited number of Alaskan reindeer by a non-Native applicant under a Special Use Permit for Public Display.

(1) We can revoke this permit for cause.

(2) The permit will not allow the permit-holder to keep a breeding herd (*i.e.*, a herd that is capable of reproduction).

(3) The permit-holder must report to us in writing by the last day of September each year on all reindeer held under this permit.

§ 243.5 Who can own imported reindeer, and what limitations apply?

(a) Anyone, including non-Natives, may own imported reindeer in Alaska for any legitimate purpose, subject to State and Federal animal health laws and regulations.

(b) Imported reindeer must not be intermingled with, or be bred to, Alaskan reindeer without our written consent. Any offspring resulting from a mating with Alaskan reindeer are considered Alaskan reindeer and a non-Native owner may not maintain these reindeer alive in Alaska.

(c) This paragraph applies if a non-Native owner of imported reindeer in Alaska contracts with a Native reindeer owner to keep and manage the imported reindeer. The non-Native owner must:

(1) Distinguish the imported reindeer from the Alaskan reindeer by applying a distinctly different permanent earmark or tattoo on all imported reindeer; and

(2) Register the earmark or tattoo with the State Division of Agriculture book of livestock brand marks.

§ 243.6 Which sales or transfers of Alaskan reindeer do not require a permit?

The following transfers do not require a permit:

(a) Sale or transfer by Alaska Natives of dead reindeer or reindeer products; and

(b) Sale of transfer of live reindeer between Alaska Natives or Native reindeer organizations.

§ 243.7 How can a non-Native acquire live reindeer?

If you are a non-Native who wants to acquire live Alaskan reindeer, you must apply to us in writing. We will either grant the request and issue a written permit valid for 90 days or reject the request and give our reasons in writing. Any transfer that we authorize is subject to the following conditions:

(a) The transfer must meet the requirements of the Act and this part.

(b) Within 30 days of transfer, you must either butcher the reindeer in Alaska or ship them out of Alaska. If you ship the reindeer out alive:

(1) You must comply with all Federal and State animal health regulations governing transfers and shipments; and

(2) The reindeer and their descendants must never be brought back to Alaska alive.

(c) Within 30 days of the transfer, you must report to us the actual number of reindeer shipped out or slaughtered.

§ 243.8 What penalties apply to violations of this part?

If you are a non-Native transferee of live Alaskan reindeer who violates the provisions of this part, you are subject to the penalties in this section.

(a) Under 25 U.S.C. 500i, you can be fined up to $5000.00 if you:

(1) Take possession of reindeer without a permit issued under § 243.7; or

(2) Do not abide by the terms of a permit issued under § 243.7 (including the requirement that you slaughter or export the reindeer within 30 days and not bring them back alive into Alaska).

(b) Under 25 U.S.C. 500b, you are barred from asserting your title to the reindeer if you:

(1) Do not obtain a transfer permit from us and fully comply with its terms; or

(2) Fail to file with us a claim of title to reindeer within 30 days of acquiring them.

§ 243.9 Who may inherit live Alaskan reindeer and by what means?

(a) Privately-owned live Alaskan reindeer may pass to the deceased owner's Native heirs by descent or devise.

(b) In the event of the death of an owner of Alaskan reindeer, any direct or indirect interest by descent or devise shall be determined by the Department of Interior in a proceeding conducted in accordance with the provisions of 43 CFR part 4, subpart D. During the pendency of such a proceeding, the authority to assume control over the affected Alaskan reindeer pursuant to 43 CFR 4.270 may be exercised by the Alaska Regional Director or his designee.

(c) This paragraph applies if the final probate decree of the Department of the Interior, or the decision of any reviewing Federal court, identifies a non-Native as inheriting Alaskan reindeer. The non-Native may inherit, but must be allowed no more than 30 days from receiving the final determination of heirship to:

(1) Slaughter the reindeer;

(2) Apply for a permit to transfer the reindeer to an out-of-state transferee; or

(3) Transfer ownership of the reindeer to one or more Alaska Native family members or other Alaska Native(s).

§ 243.10 How does the Paperwork Reduction Act affect this rule?

The actions in this rule that are covered by the Paperwork Reduction Act are cleared under OMB Control Number 1076–0047. The parts subject to this control number are 243.4(d), 243.4(e), 243.5(c), 243.7, and 243.9(c). Please note, a Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 243.11 Are transfers of Alaskan reindeer that occurred before issuance of this part valid?

All transfers of live Alaskan reindeer or reindeer products that were completed before the effective date of this part are hereby ratified and confirmed. This ratification does not extend to transfers that:

(a) Were fraudulent;

(b) Were made under duress;

(c) Did not result in payment of fair compensation to the Native transferer; or

(d) Would have been prohibited under §§ 243.6 or 243.8 of this part.

§ 243.12 Are Alaska reindeer trust assets maintained by the U.S. Government for the benefit of Alaska Natives?

Only the titles to Alaskan reindeer retained for research projects, or possessed by non-Natives under Special Use Permits for Public Display, or the titles to any Alaskan reindeer which may be acquired by the Government in the future for purposes of reestablishing a reindeer loan program, are held by the United States in trust for Alaska Natives. Other Alaskan reindeer are the private property of the Alaska Native owners. However, a trust responsibility continues to exist with respect to all Alaskan reindeer, insofar as the Government remains responsible for carrying out the provisions of the Reindeer Act and these regulations, including the provisions requiring approval of transfers to non-Natives, and providing for the determination of inheritance.

§ 243.13 Who may appeal an action under this part?

Any interested party adversely affected by a decision under this part has the right of appeal as provided in 25 CFR part 2 and 43 CFR part 4, subpart D.

[FR Doc. 06–295 Filed 1–12–06; 8:45 am]

BILLING CODE 4310–W7–P

Federal Register

Friday,
January 13, 2006

Part V

Department of Housing and Urban Development

48 CFR Part 2401, et al.
Amendments to HUD Acquisition Regulation (HUDAR); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2406, 2408, 2409, 2411, 2413, 2415, 2416, 2419, 2422, 2426, 2432, 2437, 2442, 2446, 2448 and 2452

[Docket No. FR–5010–F–01]

RIN 2535–AA27

Amendments to HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Housing and Urban Development Acquisition Regulation (HUDAR) to implement miscellaneous changes. The changes include corrections to provisions and the removal of obsolete text and clauses. This final rule reflects organizational changes within HUD and is limited to provisions that involve internal agency procedures.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of the Chief Procurement Officer (Seattle Outstation), Department of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, telephone (206) 220–5259, fax (206) 220–5247 (these are not toll-free numbers). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); and the general authorization in FAR 1.301. HUD published the most recent version of the HUDAR on January 21, 2000 (65 FR 3571, 65 FR 3575).

II. This Final Rule

This final rule revises the HUDAR to better conform to the current FAR; correct or remove obsolete text, clauses, and provisions; and make other revisions to reflect organizational changes within HUD. The following describes HUDAR changes.

Section 2401.103 is revised to reflect the most recent delegations of procurement authority by the Secretary.

Section 2401.601–70 is revised to clarify that the Chief Procurement Officer (CPO), in fulfilling the role of the Department's Senior Procurement Executive, is responsible for the oversight of all departmental contracting operations, both in Headquarters and in the field.

Section 2401.601–71 is removed in its entirety. As a general rule, the Department is removing internal organizational content from its regulations.

Section 2401.602–3 is revised to require that requests for ratifications include specific information concerning the individual who created the unauthorized commitment and to require that requests be signed by the Assistant Secretary or equivalent in Headquarters or by the program office director in the field, as applicable; remove subparagraph (b)(3), which delegated authority for ratifications below the simplified acquisition threshold to one level above the Contracting Officer; provide for different receipt points for requests in the field and Headquarters; and delegate authority to the Deputy Chief Procurement Officer to ratify unauthorized commitments arising in HUD Headquarters.

Section 2401.603–2 is revised to remove agency-specific training requirements and to reflect the qualification standards developed by the Office of Federal Procurement Policy for GS–1102 occupational series employees.

Section 2402.101 is revised to reflect Head of Contracting Activity (HCA) responsibilities.

Section 2406.304–70 is revised to designate the Deputy Chief Procurement Officer as the official responsible for approving justifications for other than full and open competition for certain field procurements.

Provisions formerly at section 2437.110(b) have been revised and added to a new section 2408.802–70. This section applies to solicitations and contracts where the end product is written material and requires the clause at section 2452.208–71, redesignated from section 2452.237–71, to be used. This clause contains standard requirements for the reproduction of written materials.

Section 2409.507–2 is revised to clarify that the clause at section 2452.209–71, Limitation on Future Contracts, is to be used in solicitations and contracts for services.

Section 2411.404 is revised to require the insertion of an effective date in contract documents for services. This revision does not apply to indefinite-delivery contracts.

Section 2413.307 is removed because the form it prescribes is obsolete.

Section 2415.303 is revised to reflect departmental policy that Assistant Secretaries, or their equivalent, for requiring activities be designated source selection authorities for selections made using the tradeoff process. Assistant Secretaries may delegate this function to other departmental officials. The section is also revised to make minor corrections in terminology.

Section 2415.606 is revised to reflect departmental reassignment of responsibility for Headquarters contracting operations to the Chief Procurement Officer.

Section 2416.406 is revised to clarify the applicability of clause 2452.216–70 to cost-type contracts, add a prescription for a new clause at 2452.216–71, renumber existing clauses, and differentiate the applicability of certain clauses to contracts and individual task or delivery orders.

Section 2416.505 is revised to clarify the circumstances under which Contracting Officers may designate ordering officials who may place task orders under indefinite-delivery contracts and correct the paragraph numbering to correspond to that of the FAR.

Section 2416.506–70 is revised to add a requirement that the Contracting Officer establish a schedule for the definitization of unpriced task orders and for the Head of Contracting Activity (HCA) to approve definitization periods greater than 180 days; prescribe the use of a standard contract clause for specifying the minimum and maximum amounts in indefinite quantity and requirements contracts; prescribe the use of a standard contract clause for inserting estimated quantities for order in requirements solicitations; and prescribe the use of a standard contract clause for ordering procedures under indefinite delivery contracts. In addition, the paragraphs are redesignated.

Section 2419.708 is revised to delete the prescription for the alternate to

clause 2452.219–70 (see 2452.219–70 discussion).

A new section 2419.800 is added to reference HUD's partnership agreement with the Small Business Administration (SBA) that permits HUD to directly award contracts under the SBA's Section 8(a) Program.

Section 2422.1408 is revised to clarify that the clause at 2452.222–70 is applicable when the contract requires the contractor to hold meetings, conferences, or seminars.

Sections 2426.7003 and 2452.226–70 are removed. The certification at 2452.226–70, prescribed by this section, is redundant to the certification prescribed at FAR section 52.219–1, Alternate I.

Section 2432.908 is revised to add a new paragraph (c)(3) to permit the Contracting Officer to tailor payment clauses for situations where payment will not be predicated on the submission of an invoice or voucher (e.g., the contractor is paid directly from the proceeds of the sale of HUD-owned real estate).

Section 2437.204 is added to redelegate the authority in FAR 37.204 to the Senior Procurement Executive.

Section 2442.1106 is removed. Its content was essentially redundant to section 2442.1107.

Section 2442.1107 is revised to clarify the applicability of clause 2452.242–71. A new alternate for use in fixed-price contracts for similar services is added.

Section 2446.502–70 is revised to clarify that the clause is applicable to all contracts.

A new part 2448 and subpart 2448.1 are added to implement FAR subpart 48.1. This new part consists of three new sections: Section 2448.102, entitled "Policies," which states which officials have authority in the value engineering process; section 2448.103, which states rules for processing value engineering change proposals; and section 2448.104–3, which delegates authority for calculating and tracking collateral savings to the Contracting Officer.

Section 2452.203–70 is revised to correspond to terminology used in the FAR.

Section 2452.211–70 is revised to include an effective date when different from the award date and to provide for setting forth any optional ordering periods.

Section 2452.216–71 is removed and replaced by a new section 2452.216–71, which provides coverage for fixed-price-award-fee contracts.

In section 2452.216–72, the prescriptive text citation is corrected. The statement that the Contracting Officer's decisions are not subject to the disputes clause is removed.

In section 2452.216–73, the prescriptive text citation is corrected.

In section 2452.216–75, the prescriptive text citation is corrected.

New sections 2452.216–76, 2452.216–77, and 2452.216–78 are added to provide standard ordering and other terms for indefinite delivery contracts.

Section 2452.219–70 is revised to correct the clause title, correct the reference to FAR section 52.219–9, delete Alternate I to the clause, and delete information that is redundant to the FAR.

Section 2452.219–71 is removed. All reporting of subcontracting performance data must now be made via the governmentwide Electronic Subcontracting Reporting System (eSRS).

Section 2452.222–70 is revised to clarify that the contractor is responsible for ascertaining the specific accessibility needs of each meeting, seminar, or conference held pursuant to the contract.

Section 2452.226–70 is removed. See comments regarding section 2426.7003.

Section 2452.233–70 is revised to permit the insertion of the Head of Contracting Activity's (HCA) name and address.

Section 2452.237–70 is revised to remove language concerning the ratification in writing of the replacement of key personnel by the contractor, as well as language permitting amendment of the clause to add or subtract personnel. Contractors will still have to obtain prior Contracting Officer approval before diverting or replacing key personnel. The section is also revised to permit the inclusion of specific personnel descriptions, and tasks, duties, efforts, etc., for which each key personnel member is responsible. Last, the revision adds a definition of personnel that clarifies which personnel are key personnel.

Section 2452.237–71 is redesignated as 2452.208–71. The requirement for this clause is more appropriately located under subpart 2408.8, Acquisition of Printing and Related Supplies.

Section 2452.237–73 is revised to clarify that the technical representative is identified at time of award to more clearly prohibit guidance which causes the contractor to perform work outside the statement of work or specifications, to require contractor notification of the appointment of lower tier technical representatives, to provide for the inclusion of other restrictions on guidance specific to individual contracts, and to provide for contractor notification to the Contracting Officer if the contractor believes that any guidance is in violation of the clause.

Section 2452.237–77 is revised to remove paragraph (d), which was contradictory to the requirements of paragraph (c), and to rename the clause, "Observance of Legal Holidays and Closure of HUD Facilities." This title more accurately describes the requirements of the clause than did its former name, "Observance of Legal Holidays and Administrative Leave." Closure of HUD facilities, rather than the granting of administrative leave to HUD employees, is the proper subject.

In section 2452.239–71, paragraph (d) is revised to substitute the word "limit" for the word "subrogate." "Limit" reflects the intended meaning of the sentence.

Section 2452.242–71 is revised to simplify the language in paragraph (a) and add a new subparagraph (b)(3) in which the Contracting Officer can specify the reporting period; edit the clause to improve its readability; and clarify that when used with individual task orders under contracts, the term contract refers to the task order. An Alternate I is added to tailor the clause for use in fixed-price arrangements.

Section 2452.246–70 is revised to delete the reference to the Standard Form 26, as contract awards may be made on other forms, and to clarify that the clause is applicable to all contracts.

III. Findings and Certifications

Justification for Final Rulemaking

HUD's regulations at 24 CFR 10.1 state that notice and public procedure may be omitted with respect to statements of policy, interpretative rules, rules governing the Department's organization or its own internal practices or procedures. Because this rule is limited to updating the Department's internal practices and procedures as described in the regulations at 48 CFR chapter 24, HUD is omitting notice and comment procedures.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0091. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

Other Matters

Because this rule is limited to internal agency practices and procedures, this rule does not impose unfunded mandates within the meaning of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) or have federalism implications within the meaning of Executive Order 13132 (Federalism).

List of Subjects

48 CFR Part 2401

Government procurement, Reporting and recordkeeping requirements.

48 CFR Parts 2402, 2406, 2408, 2409, 2411, 2413, 2415, 2416, 2432, 2437, 2442, 2446, and 2448.

Government procurement.

48 CFR Part 2419

Government procurement, Small businesses.

48 CFR Part 2422

Government procurement, Individuals with disabilities, Labor.

48 CFR Part 2426

Colleges and universities, Government procurement, Minority businesses.

■ For the reasons discussed in the preamble, HUD amends title 48, Chapter 24 of the Code of Federal Regulations as follows:

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 2. Revise section 2401.103 to read as follows:

2401.103 Authority.

The HUDAR is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the general authorization in FAR 1.301, and the Secretary's delegations of procurement authority.

■ 3. Revise section 2401.601–70 to read as follows:

2401.601–70 Senior Procurement Executive.

Unless otherwise designated by the Secretary through a delegation of authority, the Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all departmental procurement policy, regulations, and procedures, and oversight of all HUD procurement operations. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement workforce, and certification to the Secretary that the Department's procurement system meets approved criteria.

2401.601–71 [Removed]

■ 4. Remove section 2401.601–71.

■ 5. Revise section 2401.602–3 to read as follows:

2401.602–3 Ratification of unauthorized commitments.

(b)(1) Requests for ratification of unauthorized commitments arising in HUD Headquarters shall be submitted in writing to the Contracting Officer through the Chief Procurement Officer. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign requests. Requests for ratification of unauthorized commitments arising in the field shall be submitted in writing to the Director of the cognizant FCO. The Director of the field-based office that created the unauthorized commitment shall sign the request.

(3) In accordance with FAR 1.602–3(b)(3), the Deputy Chief Procurement Officer is delegated authority to ratify unauthorized commitments arising in HUD Headquarters.

(c)(5) Concurrence by legal counsel in the Contracting Officer's recommendation for payment of an unauthorized commitment (see FAR 1.602–3(c)(5)) shall not be required when the value of the payment is equal to, or less than, the simplified acquisition threshold.

(7) Requests shall include:

(i) An explanation of the need for the services or supplies;

(ii) The reasons why normal procurement procedures were not followed;

(iii) The circumstances and events associated with the unauthorized commitment;

(iv) The price competition that was obtained or the price otherwise justified;

(v) The amount of any funding needed to meet the obligation created by the unauthorized commitment and evidence of funds availability;

(vi) The name and position of the individual who made the unauthorized commitment; and

(vii) A description of the corrective management measures to prevent future unauthorized commitments. If the individual who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

■ 6. Revise section 2401.603–2 to read as follows:

2401.603–2 Selection.

(a) In selecting Contracting Officers, appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation, and ethics of the individual to be appointed. Appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute or administer, and any other limitations on the scope of the authority to be exercised.

(b) Individuals appointed to a position having Contracting Officer authority, and whose primary duties are performed as a Contracting Officer, other than contracting authority limited to simplified acquisition procedures, shall meet the following requirements:

(1) The education and specialized experience commensurate with the grade of the appointee as set forth in the qualification standards for the GS–1102 occupational series developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433, and two years of experience performing contracting, procurement, or purchasing operations in a government or commercial procurement office. Alternately, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for appointment.

(2) Successful completion of contracting-related training as prescribed by the Senior Procurement Executive.

(c) The Senior Procurement Executive may waive education and specialized

experience requirements as provided for in the qualification standards developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433.

PART 2402—DEFINITIONS OF WORDS AND TERMS

■ 7. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 8. In section 2402.101, revise the definition of *Head of Contracting Activity* to read as follows:

2402.101 Definitions.

* * * * *

Head of Contracting Activity (HCA) is defined in accordance with FAR subpart 2.1. The following HUD officials are designated as HCAs:

(1) The Chief Procurement Officer, for HUD Headquarters procurements. The Chief Procurement Officer may delegate this authority to the Deputy Chief Procurement Officer; and

(2) The Directors, Field Contracting Operations, for procurements on behalf of their field-based requiring activities.

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PART 2406—COMPETITION REQUIREMENTS

■ 9. The authority citation for part 2406 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 10. Revise section 2406.304–70 to read as follows:

2406.304–70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract with a value of more than $1 million but not exceeding $50 million, by the Deputy Chief Procurement Officer.

■ 11. Add part 2408 to read as follows:

PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2408.8—Acquisition of Printing and Related Supplies

2408.802–70 Contract clause.

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2408.802–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.208–71, Reproduction of Reports, in solicitations and contracts where the contractor is required to produce, as an end product, publications or other written materials.

PART 2409—CONTRACTOR QUALIFICATIONS

■ 12. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 13. Revise section 2409.507–2 to read as follows:

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 2452.209–71, Limitation on Future Contracts, in solicitations and contracts for services above the simplified acquisition threshold whenever the Contracting Officer has reason to believe that the nature of the proposed contract requirements may present an organizational conflict of interest as defined at FAR subpart 9.5. The Contracting Officer shall describe in the clause the nature of the potential conflict and the negotiated terms and duration of the limitation. The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all solicitations and contracts.

PART 2411—DESCRIBING AGENCY NEEDS

■ 14. The authority citation for part 2411 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 15. Revise section 2411.404 to read as follows:

2411.404 Contract clause.

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.211–70, Effective Date and Contract Period, in all solicitations and contracts for services, other than indefinite-delivery contracts.

(b) If the contract includes options to extend the period of the contract, the Contracting Officer shall use the clause with its Alternate I.

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

■ 16. The authority citation for part 2413 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2413.307 [Removed]

■ 17. Remove section 2413.307.

PART 2415—CONTRACTING BY NEGOTIATION

■ 18. The authority citation for part 2415 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

■ 19. Revise section 2415.303(a) to read as follows:

2415.303 Responsibilities.

(a) In accordance with FAR 15.303, the source selection authorities are designated as follows:

(1) The Contracting Officer, for contracts awarded using the lowest price technically acceptable proposal process.

(2) The Assistant Secretary or equivalent for the office initiating the procurement for contracts awarded using the tradeoff process. The Assistant Secretary or equivalent may delegate this function to appropriate departmental personnel.

(3) For procurements for the performance of legal services by outside counsel using either the lowest price technically acceptable or tradeoff process, the General Counsel or his/her designee.

* * * * *

■ 20. Revise section 2415.606 to read as follows:

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section, shall mean proposals for procurement contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a **Federal Register** announcement, unsolicited proposals should be submitted to:

(1) For research: Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit, 451 Seventh Street, SW., Washington, DC 20410–0001.

(2) For all others: Department of Housing and Urban Development, Office of the Chief Procurement Officer, 451 Seventh Street, SW., Washington, DC 20410–0001.

(c) Individuals or organizations interested in submitting unsolicited proposals should contact the appropriate office in paragraph (b) of this section for additional information on proposal requirements.

PART 2416—TYPES OF CONTRACTS

■ 21. The authority citation for part 2416 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

■ 22. Revise section 2416.406 to read as follows:

2416.406 Contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.216–70, Estimated Cost, Base Fee and Award Fee, in all cost-plus-award-fee solicitations and contracts.

(2) The Contracting Officer shall insert the clause at 2452.216–71, Award Fee, in all fixed-price-award-fee solicitations and contracts.

(3) The Contracting Officer shall insert the clauses at 2452.216–72, Determination of Award Fee Earned, 2452.216–73, Performance Evaluation Plan, and 2452.216–74, Distribution of Award Fee, in all award-fee solicitations and contracts. The Contracting Officer may modify the clauses to meet individual situations, and any clause or specific requirement therein may be deleted when it is not applicable to a given contract. When including the clause at 2452.216–74, Distribution of Award Fee, in cost-plus-award-fee contracts, the Contracting Officer shall use the clause with its Alternate I.

(4) When including the clauses at 2452.216–70, Estimated Cost, Base Fee and Award Fee, and 2452.216–71 Award Fee, in indefinite-delivery solicitations and contracts under which all supplies or services will be obtained by issuance of task or delivery orders, the Contracting Officer shall substitute the word "order" for the word "contract."

■ 23. Revise section 2416.505 to read as follows:

2416.505 Ordering.

(a) The Contracting Officer shall be the ordering official for all task orders when the price or cost, or any other terms, is arrived at through a negotiated process. The Contracting Officer may designate an ordering official when orders are to be placed on a firm fixed-price basis, the prices of the specific services to be performed or the supplies to be obtained under the order are set forth in the contract, and there is no negotiation of order terms. The Contracting Officer may not designate ordering officials:

(1) For contracts for services where prices are not tied to delivery of a completed service;

(2) For any contracts where discounts need to be negotiated; or

(3) In any other circumstances where adjustment of contract price or any other terms and conditions is necessary.

(b)(5) The departmental competition advocate also serves as the departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(5).

(i) Each HCA shall designate a contracting activity ombudsman for task and delivery order contracts.

(ii) The contracting activity ombudsman shall:

(A) Review complaints from contractors concerning task or delivery orders placed by the contracting activity;

(B) Be independent of the Contracting Officer who awarded or is administering the contract under which a complaint is submitted;

(C) Recommend any corrective action to the cognizant Contracting Officer; and

(D) Refer to the departmental ombudsman issues that cannot be resolved.

(iii) Contractors may request that the departmental ombudsman review complaints when they disagree with reviews conducted by the contracting activity ombudsman.

■ 24. Revise section 2416.506–70 to read as follows:

2416.506–70 Solicitation provisions and contract clauses.

(a) *Unpriced task orders.* The Contracting Officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in contracts in which task orders are individually negotiated and when there may be a need to issue unpriced task orders. The Contracting Officer shall ensure that the cost of the work authorized by any unpriced task order is not in excess of the funds available for the order. The Contracting Officer shall establish the time period for the definitization of each unpriced order and insert the anticipated date of definitization in the clause. The HCA shall approve periods that exceed 180 days.

(b) *Minimum and maximum quantities and amounts for order.* The Contracting Officer shall insert the clause at 2452.216–76, Minimum and Maximum Quantities and Amounts for Order, in all indefinite-quantity solicitations and contracts. When the clause is used for definite-quantity or requirements solicitations and contracts, the Contracting Officer shall insert "none" for the minimum quantities and minimum amounts for order. When the quantity amounts are based upon labor rates established in the contract, the Contracting Officer shall use the clause with its Alternate I.

(c) *Estimated quantities—requirements contract.* The Contracting Officer shall insert the provision at 2452.216–77, Estimated Quantities—Requirements Contract, in all solicitations for requirements contracts.

(d) *Ordering procedures.* The Contracting Officer shall insert the clause at 2452.216–78, Ordering Procedures, in all indefinite-delivery solicitations and contracts. If the supplies or services to be ordered under the contract are pre-priced in the contract, the orders will be issued on a fixed-price basis, and no order terms are negotiated before issuance, the Contracting Officer shall use the clause with its Alternate I. If the contract provides for the issuance of task orders for services on a negotiated basis (see also 2416.505), the Contracting Officer shall use the clause with its Alternate II.

PART 2419—SMALL BUSINESS PROGRAMS

■ 25. The authority citation for part 2419 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 26. Revise the title of Subpart 2419.7 to read as follows:

Subpart 2419.7—The Small Business Subcontracting Program

■ 27. Revise section 2419.708 to read as follows:

2419.708 Solicitation Provisions and Contract Clauses.

(d) The Contracting Officer shall insert the provision at 2452.219–70 in negotiated solicitations exceeding $500,000 ($1,000,000 for construction) that are not set aside for small business or 8(a) concerns.

■ 28. Add subpart 2419.8 and section 2419.800 to read as follows:

Subpart 2419.8—Small Business Administration Section (8)(a) Program

2419.800 General.

(f) By Partnership Agreement, dated May 21, 2004, the Small Business Administration (SBA) has delegated to the Department of Housing and Urban Development (HUD) the authority to directly execute contracts awarded under SBA's Section 8(a) program. The Senior Procurement Executive has issued internal guidance regarding the direct award of 8(a) contracts, consistent with Civilian Agency Acquisition Council Letter 98–3, "Direct 8(a) Contracting," dated May 1, 1998.

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 29. Revise the authority citation for part 2422 to read as follows:

Authority: 29 U.S.C. 793; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 30. Revise section 2422.1408 to read as follows:

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222–70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in solicitations and contracts when the contract will require the contractor (including contractor employees and subcontractors) to hold meetings, conferences or seminars.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

■ 31. The authority citation for part 2426 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2426.7003 [Removed]

■ 32. Section 2426.7003 is removed.

PART 2432—CONTRACT FINANCING

■ 33. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 34. Revise section 2432.908 to read as follows:

2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts except those for commercial services awarded pursuant to FAR Part 12.

(2) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement type solicitations and contracts when vouchers are to be sent directly to the paying office. The Contracting Officer shall insert the billing period agreed upon with the contractor (see also FAR clause 52.216–7, Allowable Cost and Payment).

(3) The Contracting Officer may substitute appropriate language for the clauses in (c)(1) and (2) above when payment under the contract will be made on the basis of other than the submission of an invoice or voucher, e.g., directly from proceeds of property sales.

PART 2437—SERVICE CONTRACTING

■ 35. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 36. Add subpart 2437.2 and section 2437.204 to read as follows:

Subpart 2437.2—Advisory and Assistance Services

2437.204 Guidelines for determining availability of personnel.

(a) The Senior Procurement Executive is the agency head for the purpose of FAR 37.204.

PART 2442—CONTRACT ADMINISTRATION

■ 37. The authority citation for part 2442 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2442.1106 [Removed]

■ 38. Section 2442.1106 is removed.

■ 39. Revise section 2442.1107 to read as follows:

2442.1107 Contract clause.

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.242–71, Contract Management System, in solicitations and contracts when all of the following conditions apply:

(1) The contract exceeds $500,000, including all options;

(2) The contract requires services of an analytical nature (e.g., applied social science research); and

(3) The contract requires the delivery of an overall end product (e.g., evaluation, study, model).

(b) The Contracting Officer shall use the basic clause for cost type contracts for the services described in paragraph (a) of this section. The clause shall be used with its alternate for fixed-price type contracts for the services described in paragraph (a) of this section.

(c) The Contracting Officer may use such a clause in contracts with a total value of $500,000 or less.

(d) The clause shall not be used in contracts for information technology services.

PART 2446—QUALITY ASSURANCE

■ 40. The authority citation for part 2446 is as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 41. Revise section 2446.502–70 to read as follows:

2446.502–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246–70, Inspection and Acceptance, in all solicitations and contracts.

■ 42. Add part 2448 to read as follows:

PART 2448—VALUE ENGINEERING

Subpart 2448.1—Policies and Procedures

Sec.

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2448.102 Policies.

(a) The authority of the agency head to exempt contracts from including Value Engineering (VE) procedures and processes under 48 CFR 48.102(a) is delegated to the HCA for individual (case-by-case) exemptions and to the Senior Procurement Executive for class exemptions.

(b) The Senior Procurement Executive is responsible for managing and monitoring HUD's VE efforts.

2448.103 Processing value engineering change proposals.

Upon receipt of a Value Engineering Change Proposal (VECP), the Contracting Officer shall promptly forward it to the program office responsible for the contract, indicating:

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the government's acceptance or rejection of the VECP, unless additional time is required for evaluation;

(c) The date by which the Contracting Officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed to evaluate the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor, if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, and government costs, that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in a contract

modification accepting the VECP in whole or in part; and

(h) The need for additional funds, if acceptance of the VECP will result in an increase in the cost of contract performance.

2448.104–3 Sharing collateral savings.

(a) The authority of the HCA to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived under 48 CFR 48.104–3(a) is delegated to the Contracting Officer.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 43. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

■ 44. Revise section 2452.203–70 to read as follows:

2452.203–70 Prohibition Against the Use of Government Employees.

As prescribed in 2403.670, insert the following clause in all solicitations and contracts:

PROHIBITION AGAINST THE USE OF GOVERNMENT EMPLOYEES (FEB 2006)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to government employees or a business concern or other organization owned or substantially owned or controlled by one or more government employees. For the purposes of this contract, this prohibition against the use of government employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

■ 45. Revise section 2452.211–70 to read as follows:

2452.211–70 Effective Date and Contract Period.

As prescribed in 2411.404(a), insert the following clause:

EFFECTIVE DATE AND CONTRACT PERIOD (FEB 2006)

(a) This contract shall be effective on_____[Contracting Officer insert date at award].

(b) The contractor shall complete all work including all deliveries by_____[Contracting Officer insert date at award].

(c) Delivery dates for specific services and deliverables shall be as set forth in the Schedule.

(End of clause)

Alternate I (FEB 2006). As prescribed in 2411.404(b), add the following paragraph (d):

(d) In accordance with the clause at 52.217–9, "Option to Extend the Term of the Contract," the contract may be extended for the following periods:

Option No.	Period
[list]	[dates].

(End of Clause)

■ 46. Revise section 2452.216–70 to read as follows:

2452.216–70 Estimated Cost, Base Fee and Award Fee.

As prescribed in 2416.406(e)(1), insert the following clause in all cost-plus-award-fee contracts:

ESTIMATED COST, BASE FEE AND AWARD FEE (FEB 2006)

(a) The estimated cost of this contract is $[*insert amount*].

(b) A base fee is payable in the amount of $[*insert amount*]. The government will make payment of the base fee in [*insert number*] increments on the schedule set forth in the Performance Evaluation Plan established by the government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(c) A maximum award fee available for payment is $[*insert amount*]. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

■ 47. Revise section 2452.216–71 to read as follows:

2452.216–71 Award Fee.

As prescribed in 2416.406(e)(2), insert the following clause in all fixed-price-award-fee contracts:

AWARD FEE (FEB 2006)

In addition to the fixed-price for this contract set forth in the Schedule, a maximum award fee of $[insert amount] is available for payment. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

■ 48. Revise section 2452.216–72 to read as follows:

2452.216–72 Determination of Award Fee Earned.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DETERMINATION OF AWARD FEE EARNED (FEB 2006)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO's) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision will be made unilaterally by the government. In reaching this decision, the FDO may consider any justification of award fee the contractor submits, provided that the justification is submitted within [insert number] days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the contractor within [*insert number*] days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that any amount of fee not earned during the evaluation period may be accumulated and allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

■ 49. In section 2452.216–73, revise the undesignated introductory paragraph to read as follows:

2452.216–73 Performance Evaluation Plan.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

* * * * *

■ 50. Revise section 2452.216–74 to read as follows:

2452.216–74 Distribution of Award Fee.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DISTRIBUTION OF AWARD FEE (FEB 2006)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: [*insert time period*]

Available Award Fee: [*insert dollar amount*]

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract.

(End of clause)

Alternate I (FEB 2006). As prescribed in 2416.406(e)(3), add paragraph (c):

(c) The contract clauses required for cost-reimbursement contracts shall be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" shall be substituted for "fixed fee" where it appears in the clause at FAR 52.243–2, Changes—Cost Reimbursement.

(2) The term "base fee" shall be substituted for "fee" where it appears in the clauses at

FAR 52.232–20, Limitation of Costs, and FAR 52.232–22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule" shall be substituted for the term "fee" whenever it appears in the clause at FAR 52.216–7, Allowable Cost and Payment.

(End of clause)

■ 51. Revise section 2452.216–75 to read as follows:

2452.216–75 Unpriced Task Orders.

As prescribed in 2416.506–70(a), insert the following clause:

UNPRICED TASK ORDERS (FEB 2006)

(a) Prior to the issuance of a task order under this contract, it is anticipated that the government and the contractor will reach agreement on the price or total cost and fee (if applicable) for the services to be provided under the order. The Contracting Officer may authorize commencement of work prior to final agreement on cost or price. In such case, the contractor shall immediately commence performance of the services specified in the order and shall submit a pricing proposal within 15 days of receipt of the task order. Upon completion of negotiations, the final negotiated cost or price will be set forth in a supplemental agreement that is executed by the contractor and the Contracting Officer. Failure to agree upon the cost or price shall be considered a dispute subject to the Disputes clause of this contract.

(b) Unpriced task orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the task order. The task order shall only require the Contracting Officer's signature, but shall also comply with all other task order requirements. Unpriced task orders shall indicate the date by which the government anticipates that the cost or price of the order will be definitized..

(End of clause)

■ 52. Add section 2452.216–76 to read as follows:

2452.216–76 Minimum and Maximum Quantities and Amounts for Order.

As prescribed in 2416.506–70(b), insert the following clause:

MINIMUM AND MAXIMUM QUANTITIES AND AMOUNTS FOR ORDER (FEB 2006)

The minimum quantity and/or amount to be ordered under this contract shall not be less than the minimum quantity and/or amount shown in the following table. The maximum quantity and/or amount to be ordered under this contract shall not exceed the maximum quantity and/or amount shown in the table.

BASE PERIOD

Minimum quantity	Minimum amount	Maximum quantity	Maximum amount
	$		$

OPTION PERIOD

Minimum quantity	Minimum amount	Maximum quantity	Maximum amount
	$		$

Continue for additional option periods.

(End of clause)

Alternate I (FEB 2006). As prescribed in 2416.506–70(b), add the following paragraph:

The government is not obligated to order any specific minimum number of hours from any labor category or combination of categories, nor is the government limited, beyond the maximums set forth herein, to ordering any maximum number of hours from any labor category or combination of categories.

(End of clause)

■ 53. Add section 2452.216–77 to read as follows:

2452.216–77 Estimated Quantities—Requirements Contract.

As prescribed in 2416.506–70(c), insert the following provision:

ESTIMATED QUANTITIES—REQUIREMENTS CONTRACT (FEB 2006)

In accordance with FAR 52.216–21(a), the government provides the following estimates:

The estimated quantity or amount of supplies or services the government may order during the ordering period of this contract is ___[*insert description of item(s) or unit(s) and the estimated number of units or the dollar value*].

The maximum quantity or amount of supplies or services the government may order during the ordering period of this contract is ___[*insert description of item(s) or unit(s) and the estimated number of units or the dollar value*].

(End of Provision)

■ 54. Add section 2452.216–78 to read as follows:

2452.216–78 Ordering Procedures.

As prescribed in 2416.506–70(d), insert the following provision:

ORDERING PROCEDURES (FEB 2006)

(a) Orders issued under this contract may be placed in writing or via [*Contracting Officer to insert authorized ordering methods, e.g., telephone, facsimile (fax) machine, electronic mail (e-mail)*].

(End of clause)

Alternate I (FEB 2006). As prescribed in 2416.506–70(d), add paragraph (b):

(b) In addition to the Contracting Officer, the following individuals are authorized to issue orders under this contract:

_____

_____

_____

[Continue as necessary]

(End of clause)

Alternate II (FEB 2006). As prescribed in 2416.506–70(d), add paragraph (b):

(b) This contract provides for the issuance of task orders on a negotiated basis as follows:

(1) The Contracting Officer will provide the contractor(s) with a statement of work or task description. The contractor(s) shall provide pricing and other information requested by the Contracting Officer (e.g., proposed staffing, plan for completing the task, etc.) within the time period specified by the Contracting Officer. Failure by any contractor to provide all the requested information on time may result in the contractor not being considered or selected for issuance of the order.

(2) The Contracting Officer may require the contractor(s) to present and/or discuss (see (3) below) the proposed task order terms orally. The Contracting Officer will provide the contractor(s) with guidance on the format, location, and duration of any presentations.

(3) The Contracting Officer may discuss the proposed task order terms with the contractor(s) to ensure mutual understanding of the contractor(s)'s technical approach and/or costs or price and/or to reach mutually acceptable final terms for the task order. If more than one contractor is being considered for the task order, any discussions will be held individually with each contractor.

(4) The task order shall be executed by the contractor and the Contracting Officer.

(End of clause)

■ 54. Revise section 2452.219–70 to read as follows:

2452.219–70 Small Business Subcontracting Plan Compliance.

As prescribed in 2419.708(d), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN COMPLIANCE (FEB 2006)

(a) This provision is not applicable to small business concerns.

(b) Offerors' attention is directed to the provisions in this solicitation at FAR 52.219–8, Utilization of Small Business Concerns, and the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(c) The government will consider offerors' prior compliance with subcontracting plans in determining their responsibility (see FAR 9.104–3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and the applicable goals and actual performance (dollars and percentages) for subcontracting with the types of small business concerns listed in the clause at FAR 52.219–9. This information shall be provided for the three most recently completed contracts with such subcontracting plans.

(End of provision)

2452.219–71 [Removed]

■ 55. Remove section 2452.219–71.

■ 56. Revise section 2452.222–70 to read as follows:

2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (FEB 2006)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract meets all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and any implementing regulations of the Department. The contractor shall be responsible for ascertaining the specific accessibility needs (*e.g.*, sign language interpreters) for each meeting, conference, or seminar in light of the known or anticipated attendees.

(End of clause)

2452.226–70 [Removed]

■ 57. Remove section 2452.226–70.

■ 58. Revise section 2452.232–70 to read as follows:

2452.232–70 Payment Schedule and Invoice Submission (Fixed-Price).

As prescribed in 2432.908(c)(1), insert a clause substantially the same as the following in all fixed-price solicitations and contracts:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (FEB 2006)

(a) *Payment Schedule.* Payment of the contract price (see Section B of the contract) will be made upon completion and acceptance of all work unless a partial payment schedule is included below [*Contracting Officer insert schedule information*]:

Partial payment No.	Applicable contract deliverable	Delivery date	Payment amount
1. [ ]			.....
2. [ ]			.....
3. [ ]			.....

(Continue as necessary)

(b) *Submission of Invoices.*

(1) Invoices shall be submitted as follows: original to the payment office identified on the award document (e.g., in Block 12 on the SF–26 or Block 25 on the SF–33, or elsewhere in the contract) with a copy to the Government Technical Representative (GTR) [*if the Contracting Officer determines that one copy must be submitted to the contracting office, add, "and a copy to the Contracting Officer'*]. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232–25, Prompt Payment.

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., in Block 14 on the SF–26 or Block 21 on the SF–33). The contractor is also requestedto clearly indicate on the mailing envelope that an invoice is enclosed.

(c) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by other payment clauses or other supplemental information (e.g., contracts for commercial services) contained in this contract.

(End of clause)

■ 59. Revise section 2452.232–71 to read as follows:

2452.232–71 Voucher Submission (Cost-Reimbursement).

As prescribed in 2432.908(c)(2), insert a clause substantially the same as the following in all cost-reimbursement solicitations and contracts:

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (FEB 2006)

(a)(1) The contractor shall submit, _____ [*Contracting Officer insert billing period*], an original and two copies of each voucher. In addition to the items required by the clause at FAR 52.232–25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher, which shall be submitted in all copies to the Contracting Officer: original to the payment office, and one copy each to the Government Technical Representative (GTR) and the Contracting Officer identified in the contract.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or subsequent modification document (e.g., Block 14 of the SF–26 or Block 21 of the SF–33). The contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by other payment clauses contained in this contract.

(End of clause)

■ 60. Revise section 2452.233–70 to read as follows:

2452.233–70 Review of Contracting Officer Protest Decisions.

As prescribed in 2433.106, insert the following provision:

REVIEW OF CONTRACTING OFFICER PROTEST DECISIONS (FEB 2006)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. The protestor must submit a written request for an appeal to [*insert name of HCA and address*] not later than 10 days after the protestor's receipt of the Contracting Officer's decision (see FAR 33.101 for the definition of "days").

(b) The HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of provision)

61. Revise section 2452.237–70 to read as follows:

2452.237–70 Key Personnel.

As prescribed in 2437.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the contractor's key personnel:

KEY PERSONNEL (FEB 2006)

(a) *Definition.* "Personnel" means employees of the contractor, or any subcontractor(s), affiliates, joint venture partners, or team members, and consultants engaged by any of those entities.

(b) The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the Contracting Officer. Key personnel shall perform as follows: [*List Key Personnel and/or positions, and tasks, percentage of effort, number of hours, etc., for which they are responsible, as applicable.*]

(End of clause)

2452.237–71 [Redesignated as 2452.208–71]

■ 62. Redesignate section 2452.237–71 as 2452.208–71.

■ 63. Revise section 2452.237–73 to read as follows:

2452.237–73 Conduct of Work and Technical Guidance.

As prescribed in 2437.110(d), insert the following clause in all contracts for services:

CONDUCT OF WORK AND TECHNICAL GUIDANCE (FEB 2006)

(a) The Government Technical Representative (GTR) for liaison with the contractor as to the conduct of work is [*to be inserted at time of award*] or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

(1) Causes the contractor to perform work outside the statement of work or specifications of the contract;

(2) Constitutes a change as defined in FAR 52.243–1;

(3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or

(5) Changes any of the other express terms or conditions of the contract.

(c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone, facsimile (fax), or electronic mail.

(d) Certain of the GTR's duties and responsibilities may be delegated to one or more Government Technical Monitors (GTMs) (see HUDAR subpart 2402.1). The Contracting Officer will notify the contractor in writing of the appointment of any GTMs.

(e) Other specific limitations [*to be inserted by Contracting Officer*]:

(f) The contractor shall promptly notify the Contracting Officer whenever the contractor believes that guidance provided by any government personnel, whether or not specifically provided pursuant to this clause, is of a nature described in paragraph (b) above.

(End of clause)

■ 64. In section 2452.237–77, revise the undesignated introductory paragraph and undesignated introductory heading to read as follows, and remove paragraph (d):

2452.237–77 Observance of Legal Holidays and Closure of HUD Facilities.

As prescribed in 2437.110(e), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND CLOSURE OF HUD FACILITIES (FEB 2006)

* * * * *

■ 65. In section 2452.239–71, revise the undesignated introductory paragraph, the undesignated introductory heading, and paragraph (d) to read as follows:

2452.239–71 Information Technology Virus Security.

As prescribed in 2439.107(b), insert the following clause:

INFORMATION TECHNOLOGY VIRUS SECURITY (FEB 2006)

* * * * *

(d) This clause shall not limit the rights of the government under any other clause of this contract.

(End of clause)

■ 66. Revise section 2452.242–71 to read as follows:

2452.242–71 Contract Management System.

As prescribed in 2442.1107, insert the following clause:

CONTRACT MANAGEMENT SYSTEM (FEB 2006)

(a) The contractor shall use contract management baseline planning and progress reporting as described herein.

(b) The contract management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii)(B) of this section below);

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract (i.e., the budgeted baseline); and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, the causes of the problems, and the contractor's proposed corrective actions.

(ii) A graphic portion showing:

(A) The original time-phased, budgeted baseline.

(B) The schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan; and

(C) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(3) *Reporting frequency.* The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule based on when payments will be made under the contract*].

(c) The formats, forms, and/or software to be used for the contract management system under this contract shall be [*Contracting Officer insert appropriate language* "as prescribed in the schedule;" "a format, forms and/or software designated by the GTR;" or, "the contractor's own format, forms and/or software, subject to the approval of the GTR."].

(d) When this clause applies to individual task orders under the contract, the word "contract" shall mean "task order."

(End of clause)

Alternate I (FEB 2006). As prescribed in 2442.1107, replace paragraph (b) with the following:

(b) The contract management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract work schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii) of this section below);

(C) Describes key personnel allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization.

(ii) A graphic portion showing the planned start and completion dates of all planned tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, their causes, and the contractor's proposed corrective actions.

(ii) A graphic portion showing the schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan.

(3) *Reporting frequency.* The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule*].

(End of clause)

■ 67. Revise section 2452.246–70 to read as follows:

2452.246–70 Inspection and acceptance.

As prescribed in 2446.502–70, insert the following clause in all solicitations and contracts:

INSPECTION AND ACCEPTANCE (FEB 2006)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) or other individual as designated by the Contracting Officer or the GTR.

(End of clause)

Dated: December 21, 2005.

Joseph A. Neurauter,

Chief Procurement Officer.

[FR Doc. 06–301 Filed 1–12–06; 8:45 am]

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Part VI

Department of Housing and Urban Development

48 CFR Parts 2404, 2408 et al.
Amendments to HUD Acquisition Regulations (HUDAR); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2404, 2408, 2415, 2437, 2439, and 2452

[Docket No. FR–4705–P–01; HUD–2006–0002]

RIN 2535–AA26

Amendments to HUD Acquisition Regulations (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend HUD's Acquisition Regulations (HUDAR) to implement miscellaneous changes. The proposed revisions include improvements in clarity and uniformity in the Department's acquisition regulations.

DATES: *Comment Due Date:* March 14, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through the Federal electronic rulemaking portal at: *www.regulations.gov*. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of the Chief Procurement Officer (Seattle Outstation), Department of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, telephone (206) 220–5259, FAX (206) 220–5247 (these are not toll-free numbers). Persons with hearing or speech impairments may access that number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); and the general authorization in FAR 1.301. The most recent publication of the HUDAR as a final rule was on January 21, 2000 (65 FR 3571, 65 FR 3575).

II. This Proposed Rule

This proposed rule would amend the HUDAR to provide for greater uniformity in departmental contracts. The following describes HUD's proposed changes.

Section 2404.701 is added to prescribe the use of a non-disclosure clause to protect the Department from unauthorized disclosure of protected information (as the term is defined in the clause) provided by HUD to contractors under HUD contracts.

A new section 2408.404 is added to prescribe selection factors for use in placing competitive task orders for services under the General Services Administration (GSA) schedule contracts when the order is expected to exceed $500,000.

In Section 2415.304, a new paragraph (c) is added to prescribe the use of a solicitation provision containing the Department's small business goals and a selection factor to evaluate offerors' (other than offerors that are small businesses) proposed subcontracting with small businesses. The evaluation is conducted using the offerors' proposed small business plan submitted pursuant to HUDAR 2452.219–70. Subparagraph (d)(2) is removed to reflect departmental policy eliminating the requirement that numerical scoring be used to evaluate all technical proposals. Subparagraph (d)(1) is renumbered as paragraph (d).

Section 2415.305 is revised to better define technical unacceptability of offers.

In section 2437.110, paragraph (b) is removed and redesignated as 2408.802–70 to correspond to the FAR. Redesignated paragraph (e) is revised to change the title and simplify the prescription for the use of clause 2452.237–75. Redesignated paragraph (f) is revised to change the title of clause 2452.237–77.

Section 2439.107 is revised to clarify the applicability of clause 2452.239–70.

A new section 2452.204–70 is added to implement departmental policy concerning the non-disclosure by contractors of information that HUD provides to them. HUD believes that the additional contract clause is needed to ensure that contractors do not make unauthorized disclosures without the Department's consent.

A new section 2452.208–70 is added to prescribe criteria to be used when competing task orders under GSA Federal Supply Schedule contracts. These factors include criteria related to the contractors' proposed efforts in meeting the Department's small business subcontracting goals. HUD will revise these goals annually to reflect new governmentwide goals promulgated by the U.S. Small Business Administration and any additional changes to goal amounts that HUD determines to be warranted.

Numerous revisions are made to section 2452.209–72, including: Greater clarification of activities that may result in default; referencing the definition of organizational conflict of interest at FAR subpart 9.5; and adding a prohibition against contractors evaluating their own work or that of other entities without the Contracting Officer's approval.

Section 2452.215–70 is revised to explicitly state HUD's right to contact any or all of the references provided to it by an offeror for the purposes of assessing the offeror's past performance and HUD's right to use other relevant past performance information not provided by the offeror.

A new section 2452.215–71 is added to include a small business subcontracting source selection factor in solicitations for contracts that are expected to exceed $500,000 and contain the provision at 2452.219–70, Small Business Subcontracting Plan Compliance. The solicitation provision also notifies potential offerors of the Department's current small business subcontracting goals (see also 2452.208–70 above). [**Note:** The former 2452.215–72 is being consolidated into this provision to eliminate redundancies between them.]

Section 2452.216–70 is revised to correct the prescriptive reference and clarify its usage in cost-plus-award-fee contracts and to insert instructions concerning payment that were previously located in section 2452.216–71.

In section 2452.216–74, the prescriptive text citation is corrected,

and the last sentence of paragraph (b) and subparagraphs (b)(1)–(b)(3) are made into a new paragraph (c), an alternate clause to be used for cost-plus-award-fee contracts.

Section 2452.237–75 is revised to comply with Federal Information Processing Standards 201, Homeland Security Presidential Directive (HSPD–12), and OMB Memorandum M–05–24 with regard to granting contractor employees physical access to Government facilities.

Section 2452.239–70 is revised to comply with Federal Information Processing Standards 201, Homeland Security Presidential Directive (HSPD–12), and OMB Memorandum M–05–24, with regard to granting contractor employees access to federal government systems. It revises the definition of information technology resources covered by the clause, changes the background clearance forms required, clarifies the responsibility of contractors in identifying employees who should obtain a background clearance, and permits access by non-U.S. nationals who have been lawfully admitted to the United States for permanent residence. Reviewers are encouraged to comment on the content of the revised clause.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements proposed in this rule, as described in the table below, have been submitted to the Office of Management, and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The information collection requirements for the HUDAR are currently approved by OMB under control number 2535–0091.

HUD's estimate of the total reporting and recordkeeping burden that will result from the collection of information is as follows:

Reporting and Recordkeeping Burden:

Section reference	Number of parties	Frequency of requirement	Est. average time for requirement (hrs.)	Est. annual burden (hrs.)
HUDAR:				
2452.208–70	700	1/annum	8.0	5,600
2452.209–70	250	1/annum	0.5	125
2452.209–72	5	1/annum	1.0	5
2452.215–70	275	1/annum	80.0	22,000
2452.215 ALT II	25	1/annum	40.0	1,000
2452.216–72	5	4/annum	2.0	40
2452.216–78 ALT II	1,500	1/annum	4.0	6,000
2452.219–70	150	1/annum	0.5	75
2452.237–70	150	1/annum	1.0	150
2452.237–75	500	1/annum	1.0	500
2452.239–70	500	1/annum	1.0	500
2452.242–71 (plan)	40	1/annum	8.0	320
2452.242–71 (reports)	40	12/annum	6.0	2,880
HUD 770	2	1/annum	0.5	1
Total Reporting and Recordkeeping Burden (Hours).				39,196

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting responses to be submitted electronically.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 30 days from the date of this proposal. Comments must refer to the proposal by name (HUDAR) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Facsimile: (202) 395–6974; and

Lillian Deitzer, Department of Housing and Urban Development, Room 8001 PL, 451 Seventh Street, SW., Washington, DC 20410–0001, E-mail: *Lillian_L._Deitzer@hud.gov,* Telephone: (202) 708–2374. This is not a toll-free number.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule makes technical changes to existing contracting procedures and does not make any major changes that would significantly impact businesses. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule

that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

48 CFR Parts 2404, 2408, 2415, 2437, and 2452

Government procurement.

48 CFR Part 2439

Computer technology, Government procurement.

For the reasons discussed in the preamble, HUD proposes to amend 48 CFR chapter 24 as set forth below:

PART 2404—ADMINISTRATIVE MATTERS

1. The authority citation for part 2404 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2. Add subpart 2404.7 and section 2404.701 to read as follows:

Subpart 2404.7—Contractor Records Retention

2404.701 Contract clause.

The Contracting Officer shall insert the clause at 2452.204–70, Non-disclosure of Information, in all solicitations and contracts when it is expected or likely that the contractor will have access to, or be provided, protected information as defined in the clause.

PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Add 2408.404 and subpart heading to read as follows:

Subpart 2408.4—Federal Supply Schedules

2408.404 Selection Factors for Competitive GSA Task Orders.

(b) The Contracting Officer shall use a provision substantially the same as the provision at 2452.208–70 when placing task orders for services under General Services Administration schedule contracts when the order is expected to exceed $500,000. The Contracting Officer shall insert the percentage goals in effect at the time quotations are requested from schedule contractors. The provision may be tailored to suit the specific task order competition, but small business participation shall be evaluated in every competition.

PART 2415—CONTRACTING BY NEGOTIATION

4. The authority citation for part 2415 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

5. Revise section 2415.304 to read as follows:

2415.304 Evaluation factors.

(c) The Contracting Officer shall insert the provision at 2452.215–71 in all solicitations exceeding $500,000 that include the provision at 2452.219–70, Small Business Subcontracting Plan Compliance. The Contracting Officer shall insert the percentage goals in effect at the time offers are solicited.

(d) The solicitation shall state the basis for the source selection decision as either "lowest price technically acceptable" (LPTA) process or "tradeoff" process (as defined at FAR subpart 15.1).

6. Revise section 2415.305(a)(3) to read as follows:

2415.305 Proposal evaluation.

(a) * * *

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation.

(i) A proposal shall be considered unacceptable if

(A) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements; or

(B) It contains major deficiencies or omissions that discussions with the offeror could not reasonably be expected to cure.

(ii) Under the tradeoff process, predetermined threshold levels of technical acceptability for proposals shall not be employed.

(iii) A technical evaluation report that complies with FAR 15.305(a)(3) shall be prepared and signed by the technical evaluator(s), furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file in accordance with established departmental procedures.

PART 2437—SERVICE CONTRACTING

7. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

8. Amend section 2437.110 as follows:

a. Remove paragraph (b);

b. Redesignate paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e), respectively;

c. Revise newly redesignated paragraphs (d) and (e) to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(d) The Contracting Officer shall insert the clause at 2452.237–75, Access to HUD Facilities, in all solicitations and contracts where contractor employees, including subcontractors and consultants, will be required to work in or have access to any HUD facilities. If contractor employees will also be required to have access to HUD information systems, see 2439.107.

(e) The Contracting Officer shall insert the clause at 2452.237–77, Observance of Legal Holidays and Closure of HUD Facilities, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

9. The authority citation for part 2439 reads as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

10. Revise section 2439.107(a) to read as follows:

2439.107 Contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.239–70, Access to HUD Systems, in solicitations and contracts when the contract will require contractor employees, including subcontractors and consultants, to have

access to any HUD information system(s) as defined in the clause. If contractor employees will also be required to have physical access to HUD facilities, see 2437.110.

* * * * *

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

12. Add section 2452.204–70 to read as follows:

2452.204–70 Non-disclosure of Information.

As prescribed in 2404.701, insert the following clause:

NON-DISCLOSURE OF INFORMATION (* * * 2006)

(a) *Definitions.* As used in this clause—

Contractor means employees, subcontractors, consultants, affiliates, partners, joint ventures, and team members with which the contractor is associated.

Protected information means government procurement-sensitive information (*e.g.*, acquisition planning, source selection), proprietary business information provided to the Government by other parties (*e.g.*, other contractors), and personal information protected by the Privacy Act (*e.g.*, Social Security Numbers).

(b) The contractor shall not release, disclose, or use in any way that would permit or result in release or disclosure to any party outside the government any information described in paragraph (a) provided to the contractor by the government, unless:

(1) The Contracting Officer has given prior written authorization for its release or disclosure; or

(2) The information is otherwise in the public domain prior to the date of release.

(c) The prohibition in paragraph (b) includes information in any medium (*e.g.*, paper document, electronic file, audio or video tape, film, or oral communication). The prohibition also covers information provided by the government whether or not in its original form (*e.g.*, where the information has been included in contractor-generated work or where it is discernible from materials incorporating or based upon such information).

(d) The prohibition contained in this clause has no expiration date.

(e) The contractor shall ensure that contractor personnel who are provided protected information as defined in this clause execute a non-disclosure agreement prior to obtaining such information.

(End of clause)

13. Add section 2452.208–70 to read as follows:

2452.208–70 Selection of Contractor for Task Orders Under GSA Schedule Contracts.

As prescribed in 2408.404(b), insert a provision substantially the same as the following:

SELECTION OF CONTRACTOR FOR TASK ORDERS UNDER GSA SCHEDULE CONTRACTS (* * * 2006)

(a) *General.* Any eligible contractor may compete for the proposed task order. In awarding the task order, HUD will evaluate the contractor's offer using the selection factors in paragraph (c), and select the contractor that presents the overall best value to the federal government, considering those factors. For the purposes of evaluating offers, the combined relative merit of the offer as evaluated in accordance with the non-price factors and the small business subcontracting participation factor shall be considered more important than the evaluated cost/price.

(b) *Small business subcontracting participation.*

(1) Consistent with the intent of the Small Business Act, HUD is strongly committed to ensuring that small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses have maximum opportunities to participate in subcontracting with HUD prime contractors. Therefore, contractors shall provide the maximum practicable subcontracting opportunities to those small businesses. Contractors shall address in their offer the manner in which they plan to assist the Department in achieving this goal. As part of the evaluation for award, HUD will consider the contractor's statement addressing how it proposes to meet the small business participation goal for the task order. As part of the performance requirements under the task order, the contractor will be required to submit a semi-annual report on subcontracting achievements.

(2) In support of its commitment, HUD has established the following goals, expressed as a percentage of the total value of each contract action (including task orders, modifications, and options):

(i) Total Small Business—up to [Contracting Officer insert percentage] percent.

(ii) Within the total Small Business goal in (i), the following subordinate goals apply:

(A) Small Disadvantaged Business—[Contracting Officer insert percentage] percent.

(B) Women-Owned Small Business—[Contracting Officer insert percentage] percent.

(C) Service-Disabled Veteran-Owned Small Business—[Contracting Officer insert percentage] percent.

(D) HUBZone Small Business—[Contracting Officer insert percentage] percent.

(iii) Competing contractors shall include as part of their offer a copy of their master subcontracting plan of record for the GSA schedule contract under which this task order is to be awarded.

(c) *Selection factors.*

(1) *Non-price factors.*

(i) *Technical and management capability* (applicable to all business types).

(A) The contractor's understanding of HUD's requirement as demonstrated by the extent to which the contractor's offer presents an efficient and realistic approach to meeting the proposed requirement, considering methods, scheduling of work, and management of resources.

(B) This evaluation criterion shall also apply to subcontractors that the offeror is proposing, and their contribution to demonstrating the offeror's understanding of the requirement.

(ii) *Past performance.*

(A) (Applicable to all business types.) As confirmed by references, the contractor's demonstrated record consists of successful past performance of the same or substantially similar work, including quality of services, schedule and delivery compliance, and cost control, within [Contracting Officer insert time period, *e.g.*, the past three years]. The contractor shall identify at least five contracts, including federal, state, and local government and the private sector, for efforts similar to this requirement and provide current points of contact for each.

(B) (Applicable to other than small businesses.) Relevant is the contractor's demonstrated success in utilizing small businesses in the performance of past contracts, as confirmed by submission of required subcontracting reports, SF–294 and SF–295, and the contractor's actual achieved subcontracting percentages as contrasted with the proposed small business subcontracting goals stated under those contracts. The contractor shall identify the contracts under which it has subcontracted with small businesses, and shall provide points of contact for all federal agencies to which it has submitted subcontracting plans and reports under contracts within the past 3 years.

(iii) *Key personnel* (applicable to all business types). The qualifications, including relevant prior experience, special training, and education, of proposed key personnel (see HUDAR clause 2452.237–77, Key Personnel). The offer shall identify all key personnel and describe how each one meets the qualifications for the position for which he/she is proposed. The term "key personnel" includes employees of the contractor, any subcontractor(s), affiliates, joint venture partners, or team members, and consultants engaged by any of those entities.

(2) *Small business subcontracting participation* (applicable to other than small businesses). Small-business offerors will automatically receive the maximum possible credit for this factor. They shall not be required to submit a subcontracting plan or demonstrate subcontracting past performance (see paragraph (2)(ii)(B) above). The evaluation shall consider:

(i) The total value of the proposed small business subcontracting effort as it relates to the total value of the prospective order;

(ii) Specific goals established for the categories of small business listed in paragraph (b)(2) above;

(iii) Specific commitments from small business concerns to assist in the contractor's proposed effort as evidenced in the offer; and

(iv) The substantive nature of the work required by the task order that the contractor proposes to subcontract.

(3) *Evaluated cost/price* (applicable to all business types). HUD will evaluate the contractor's proposed costs/prices for the basic task order and all options, if any. While the cost/price will not be assigned a specific weight, it shall be considered a significant criterion in the overall evaluation of offers. HUD may award the order to other than the lowest-priced offer.

(End of provision)

14. Revise section 2452.209–72 to read as follows:

2452.209–72 Organizational Conflicts of Interest.

As prescribed in 2409.507–2, insert the following contract clause in all contracts:

ORGANIZATIONAL CONFLICTS OF INTEREST (* * * 2006)

(a) The contractor warrants that, to the best of its knowledge and belief, except as otherwise disclosed in accordance with paragraph (b), neither the contractor, nor the contractor's employees, subcontractors, team members, consultants, partners, joint ventures, affiliates, and other business relationships has an organizational conflict of interest as defined at FAR subpart 9.5, which would affect the contractor's ability to perform the work under the contract.

(b)(1) If, after award, the contractor discovers an apparent or actual organizational conflict of interest with respect to this contract, the contractor shall make an immediate written disclosure to the Contracting Officer, which shall include:

(i) A full description of the actual or potential conflict of interest, including all relevant facts; and

(ii) A plan for avoiding, neutralizing, or mitigating the conflict of interest, including a description of any effect such avoidance, neutralization, or mitigation is expected to have on the contract's cost, schedule, and performance.

(2) The contractor shall cease the performance of all affected work if directed by the Contracting Officer.

(3) When the conflict of interest can be avoided, neutralized, or mitigated, the mitigation plan accepted by the government will be incorporated into the contract by bilateral modification.

(4) If the conflict of interest cannot be avoided, neutralized, or mitigated, but the contract can be modified to remove the affected work, the Contracting Officer will modify the contract accordingly. If the conflict is extensive to the point that the removal of affected work is not practicable, the Contracting Officer may terminate the contract for convenience.

(c) The Contracting Officer may terminate the contract for default if—

(1) It is determined that the contractor was aware of an organizational conflict of interest, either before or after the award of the contract, and intentionally did not disclose the conflict to the Contracting Officer; or

(2) The contractor takes any action prohibited by this clause or fails to take action required by this clause.

(d) A conflict of interest on the part of the prime contractor, before or after award, may be grounds for disqualifying the contractor and any partners, affiliates, principals, subcontractors, consultants, and employees from performing or competing for (*e.g.*, under subcontract) any affected work. The government may unilaterally determine to permit individuals or entities associated with the prime contractor to perform or compete for affected work.

(e) The contractor shall not evaluate or otherwise advise the government concerning its own products or services, or those of another contractor or organization competing for a federal contract, without the written approval of the Contracting Officer. The contractor shall notify the Contracting Officer promptly, in writing, whenever the contractor has been directed to evaluate or advise the government concerning its own products or services or those of another contractor or competitor for a federal contract.

(f) If this is an indefinite-delivery type contract under which supplies or services are provided via task or delivery orders, the word "contract" shall be read to include individual orders.

(g) Nothing in this clause is intended to prohibit the contractor from marketing or selling to the government its product lines in existence on the effective date of this contract, nor shall this clause prohibit the contractor from participating in any research and development or delivering any design, development model, or prototype of any such equipment. Sales of catalog or standard commercial items by the contractor are also exempt from the requirements of this clause.

(h) The rights and remedies described herein shall not be exclusive and are in addition to other rights and remedies provided by law or included elsewhere in this contract.

(i) The contractor shall include the provisions of this clause in all subcontracts, teaming agreements, or other contractual relationships that require or provide for access to information or performance of activities covered by this clause. The contractor shall substitute "subcontractor" or other terms for "contractor" wherever appropriate.

(End of clause)

15. In section 2452.215–70, revise the undesignated introductory paragraph, the undesignated introductory heading, and paragraph (c)(2) to read as follows:

2452.215–70 Proposal Content.

As prescribed in 2415.209(a), insert a provision substantially the same as the following:

PROPOSAL CONTENT (* * * 2006)

* * * * *

(c) * * *

(2) *Past performance.* The offeror shall provide evidence of the offeror's past performance in accomplishing work—including meeting delivery dates and schedules—the same as, or substantially similar to, that required by the solicitation. The offeror shall provide references as described below. The offeror is responsible for providing accurate and current contact information for all references provided. The government shall not be responsible for any failure to contact references resulting from inaccurate or outdated information provided by the offeror. In evaluating the offeror's past performance, the government reserves the right to contact any of the references provided, but shall not be required to contact all of them. Furthermore, the government shall not be restricted to information obtained from references provided by the offeror and may use information obtained from other sources, including references not specifically provided by the offeror but which are known or become known to the government based on its review of the contractor's performance history. [Contracting Officer insert specific instructions for reference check information required].

* * * * *

16. Add section 2452.215–71 to read as follows:

2452.215–71 Small Business Subcontracting Evaluation.

As prescribed in 2415.304(c), insert the following provision:

SMALL BUSINESS SUBCONTRACTING EVALUATION (* * * 2006)

(a) *General.* In accordance with FAR 19.702, contractors shall provide the maximum practicable subcontracting opportunities to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. HUD is strongly committed to ensuring that such small businesses have maximum opportunities to participate in subcontracting with HUD prime contractors. Contractors that are unable to meet the established goal due to practical considerations must provide the rationale for the proposed level of subcontracting.

(b) *Subcontracting Goals.* In support of its commitment, HUD has established the following goals, which are expressed as a percentage of the total value of each contract and subsequent modifications:

(1) Small Business—[Contracting Officer insert percentage] percent.

(2) Within the total Small Business goal in (1), the following subordinate goals shall apply:

(i) Small Disadvantaged Business—[Contracting Officer insert percentage] percent.

(ii) Women-Owned Small Business—[Contracting Officer insert percentage] percent.

(iii) Service-Disabled Veteran-Owned Small Business—[Contracting Officer insert percentage] percent.

(iv) HUBZone Small Business—[Contracting Officer insert percentage] percent.

(c) *Evaluation.* In addition to the technical and management evaluation factors set forth

elsewhere in this solicitation, HUD will evaluate proposals in terms of subcontracting opportunities provided to small business concerns as described in the offeror's proposed subcontracting plan submitted in accordance with the provisions at 52.219–9 and 2452.219–70 in this solicitation. The evaluation shall consider the following:

(1) The total value of the proposed small business subcontracting effort as it relates to the total value of the offer for the prospective contract;

(2) The offeror's specific goals established for each of the following categories of small business:

(i) Small Business;

(ii) Veteran-owned small business;

(iii) Service-disabled veteran-owned small business;

(iv) HUBZone small business;

(v) Small disadvantaged business; and

(vi) Women-owned small business;

(3) Specific commitments to small business concerns; and

(4) The substantive nature of the work required by the solicitation that the offeror proposes to subcontract.

(End of provision)

17. Revise section 2452.237–75 to read as follows:

2452.237–75 Access to HUD Facilities.

As prescribed in 2437.110(e), insert the following clause in solicitations and contracts:

ACCESS TO HUD FACILITIES (* * * 2006)

(a) Definitions. As used in this clause—

Access means physical entry into, and to the extent authorized, mobility within, a Government facility.

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

Facility and *Government facility* mean buildings, including areas within buildings, owned, leased, shared, occupied, or otherwise controlled by the federal government.

NACI means National Agency Check with Written Inquiries, the minimum background investigation prescribed by the U.S. Office of Personnel Management.

"PIV Card" means Personal Identity Verification (PIV) Card, the federal government-issued identification credential (identification badge).

(b) *General.* The performance of this contract requires contractor employees to have access to HUD facilities. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or -approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such facility in performance of this contract. HUD may accept a PIV Card issued by another federal agency but shall not be required to do so. No contractor employee will be permitted access to a HUD facility without a proper PIV Card.

(c) *Background information.*

(1) For each contractor employee subject to the requirements of this clause and not in possession of a current PIV Card acceptable to HUD, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, "Questionnaire for Non-sensitive Positions," FD–258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17). The SF–85 and OF–306 are available from the Office of Personnel Management's (OPM) Web site: *http://www.opm.gov.* The Government Technical Representative (GTR) will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver the forms and information required in subparagraph (c)(1) to the GTR.

(3) The information provided in accordance with paragraph (c)(1) will be used to perform a background investigation to determine the suitability of the contractor employees to have access to Government facilities. After completion of the investigation, the GTR will notify the contractor in writing if any contractor employee is determined to be unsuitable to be given access to a Government facility. If so notified, the contractor shall immediately remove such employees from work on this contract that requires their physical presence in a Government facility.

(4) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in subparagraph (c)(1): employee's full name, Social Security Number, and place and date of birth.

(d) *PIV Cards.*

(1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD facilities and does not already possess a PIV Card acceptable to HUD (see paragraph (b)). HUD will not issue the PIV Card until the contractor employee has successfully cleared the FBI National Criminal History Fingerprint Check, and until HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (c)(1) has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility and shall present their cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (*e.g.*, employee terminates employment with the contractor, employee's duties no longer require access to HUD facilities). In such cases, the GTR will instruct the contractor on how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor on how to return all HUD-issued PIV Cards not previously returned. The contractor shall not return PIV Cards to any person other than the individual(s) named by the GTR.

(e) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD facility. In such cases, the contractor shall immediately notify the employee that he/she no longer has access to any HUD facility, remove the employee from any such facility that he/she may be in, and provide a suitable replacement in accordance with the requirements of this clause.

(f) *Access to HUD information systems.* If this contract requires contractor employees to have access to HUD information system(s), application(s), or information contained in such systems, the contractor shall comply with all requirements of HUDAR clause 2452.239–70, Access to HUD Systems, including providing for each affected employee any additional background investigation forms prescribed in that clause.

(g) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

18. Revise section 2452.239–70 to read as follows:

2452.239–70 Access to HUD Systems.

As prescribed in 2439.107(a), insert the following clause:

ACCESS TO HUD SYSTEMS (* * * 2006)

(a) *Definitions:* As used in this clause—

Access means the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

Application means the use of information resources (information and information technology) to satisfy a specific set of user requirements (see OMB Circular A–130).

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

Mission critical system means an information technology or

telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

NACI means National Agency Check with Written Inquiries, the minimum background investigation prescribed by the U.S. Office of Personnel Management.

PIV Card means Personal Identity Verification (PIV) Card, the federal government-issued identification credential (*i.e.*, identification badge).

Sensitive information means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of federal programs or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

System means an interconnected set of information resources under the same direct management control, which shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people (see OMB Circular A–130). *System* includes any system owned by HUD or owned and operated on HUD's behalf by another party.

(b) *General.*

(1) The performance of this contract requires contractor employees to have access to one or more HUD systems. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such system in performance of this contract. HUD may accept a PIV Card issued by another federal agency but shall not be required to do so. No contractor employee will be permitted access to any HUD system without a PIV Card.

(2) All contractor employees who require access to mission-critical systems or sensitive information contained within a HUD system or application(s) are required to undergo a more extensive background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using, or operating the system or applications(s).

(c) *Citizenship-related requirements.* Each affected contractor employee as described in paragraph (b) shall be:

(1) A United States (U.S.) citizen; or

(2) A national of the United States (see 8 U.S.C. 1408); or

(3) An alien lawfully admitted into the United States for permanent residence as evidenced by an Alien Registration Receipt Card Form I–151.

(d) *Background investigation process:*

(1) The Government Technical Representative (GTR) shall notify the contractor of those contractor employee positions requiring background investigations.

(i) For each contractor employee requiring access to HUD information systems, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, "Questionnaire for Non-sensitive Positions," FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17).

(ii) For each contractor employee requiring access to mission-critical systems or sensitive information contained within a HUD system and/or application(s), the contractor shall submit the following properly completed forms: SF–85P, "Questionnaire for Public Trust Positions," FD–258, and a Fair Credit Reporting Act form (authorization for the credit-check portion of the investigation). Contractor employees shall not complete the Medical Release behind the SF–85P.

(iii) The SF–85, 85P, and OF–306 are available from the Office of Personnel Management's Web site: *http://www.opm.gov.* The GTR will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver to the GTR the forms and information required in subparagraph (d)(1).

(3) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in subparagraph (d)(1): Employee's full name, Social Security Number, and place and date of birth.

(4) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the investigative forms described in subparagraph (d)(1).

(5) Upon completion of the investigation process, the GTR will notify the contractor if any contractor employee is determined to be unsuitable to have access to HUD's system(s), application(s), or information. Any employee who HUD determines to be unsuitable may not be given access to those resources. If an unsuitable employee has already been given access pending the results of the background investigation, the contractor shall ensure that the employee's access is revoked immediately upon receipt of the GTR's notification.

(6) Failure of the GTR to notify the contractor (see subparagraph (d)(1)) of any employee who should be subject to the requirements of this clause and is known, or should reasonably be known, by the contractor to be subject to the requirements of this clause, shall not excuse the contractor from making such employee(s) known to the GTR. Any such employee who is identified and is working under the contract without having had the appropriate background investigation or furnished the required forms for the investigation, shall cease to perform such work immediately and shall not be given access to the system(s)/application(s) described in paragraph (b) until the contractor has provided the investigative forms required in subparagraph (d)(1) for the employee to the GTR.

(7) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD, or for whom a background investigation was completed, terminates employment with the contractor or otherwise is no longer performing work under this contract that requires access to the system(s), application(s), or information. The contractor shall provide a copy of the written notice to the Contracting Officer.

(e) *PIV Cards.*

(1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD systems and does not already possess a PIV Card acceptable to HUD (see paragraph (b)). HUD will not issue the PIV Card until the contractor employee has successfully cleared an FBI National Criminal History Fingerprint Check, and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean all background information required in paragraph (d)(1) has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (*e.g.*, the employee terminates employment with the contractor, or employee's duties no longer require access to HUD systems). The GTR will instruct the contractor on how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor on how to return all HUD-issued PIV Cards not previously returned. The contractor shall not return PIV Cards to any person other than the individual(s) named by the GTR.

(f) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD systems. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD system. The contractor shall immediately notify such an employee that he/she no longer has access

to any HUD system, shall retrieve the employee's PIV Card from the employee, and shall provide a suitable replacement employee in accordance with the requirements of this clause.

(g) *Incident response notification.* An incident is defined as an event, either accidental or deliberate, that results in unauthorized access, loss, disclosure, modification, or destruction of information technology systems, applications, or data. The contractor shall immediately notify the GTR and the Contracting Officer of any known or suspected incident, or any unauthorized disclosure of the information contained in the system(s) to which the contractor has access.

(h) *Non-disclosure of information.*

(1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD is the sole property of HUD.

(2) The contractor shall require that all employees who may have access to the system(s)/applications(s) identified in paragraph (b) sign a pledge of non-disclosure of information. The employees shall sign these pledges before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of 3 years after final payment under this contract. The contractor shall provide a copy of these pledges to the GTR.

(i) *Security procedures.*

(1) The contractor shall comply with applicable federal and HUD statutes, regulations, policies, and procedures governing the security of the system(s) to which the contractor's employees have access including, but not limited to:

(i) Federal Information Security Management Act (FISMA) of 2002;

(ii) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(iii) HUD Handbook 2400.25, Information Security Policy;

(iv) HUD Handbook 732.3, Personnel Security/Suitability;

(v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;

(vi) Homeland Security Presidential Directive 12 (HSPD–12); and

(vii) OMB Memorandum M–05–24, Implementing Guidance for HSPD–12.

The HUD Handbooks are available online at: *http://www.hudclips.org/* or from the GTR.

(2) The contractor shall develop and maintain a compliance matrix that lists each requirement set forth in paragraphs (b), (c), (d), (e), (f), (g), (h), (i)(1), and (m) of this clause with specific actions taken, and/or procedures implemented, to satisfy each requirement. The contractor shall identify an accountable person for each requirement, the date actions/procedures were initiated/completed, and certify that information contained in this compliance matrix is correct. The contractor shall ensure that information in this compliance matrix is complete, accurate, and up-to-date at all times for the duration of this contract. Upon request, the contractor shall provide copies of the current matrix to HUD.

(3) The contractor shall ensure that its employees, in performance of the contract, receive annual training (or a single time if the contract is for less than one year) in HUD information technology security policies, procedures, computer ethics, and best practices in accordance with HUD Handbook 2400.25.

(j) *Access to contractor's systems.* The contractor shall afford HUD, including the Office of Inspector General, access to the contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2)), databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out, but not limited to, any information security program activities, investigation and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

(k) *Contractor compliance with this clause.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(l) *Physical access to federal government facilities.* The contractor and any subcontractor(s) shall also comply with the requirements of HUDAR clause 2452.237–75 when the contractor's or subcontractor's employees will perform any work under this contract on-site in a HUD or other federal government facility.

(m) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

Dated: December 21,2005.

Joseph A. Neurauter,

Chief Procurement Officer.

[FR Doc. 06–302 Filed 1–12–06; 8:45 am]

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Federal Register

Vol. 71, No. 9

Friday, January 13, 2006

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–230	3
231–536	4
537–872	5
873–1388	6
1389–1472	9
1473–1682	10
1683–1914	11
1915–2134	12
2135–2452	13

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6867 (See: Notice of January 10, 2006).....2133
7757 (See: Notice of January 10, 2006).....2133
Administrative Orders:
Memorandums:
Memorandum of December 15, 2005.....1467
Presidential Determinations:
No. 2006–6 of December 22, 2005.....1469
No. 2006–7 of December 30, 2005.....871
No. 2006–8 of December 30, 2005.....1471
Notices:
Notice of January 6, 2006.....1681
Notice of January 10, 2006.....2133

5 CFR

1650.....1389
Proposed Rules:
1651.....1984

7 CFR

226.....1
400.....2135
930.....1915
946.....1919
982.....1921
Proposed Rules:
56.....2168
70.....2168
319.....1700
1000.....545
1001.....545
1005.....545
1006.....545
1007.....545
1030.....545
1032.....545
1033.....545
1124.....545
1126.....545
1131.....545

9 CFR

317.....1683
381.....1683
391.....2135
590.....2135
592.....2135
Proposed Rules:
77.....1985
392.....1988

10 CFR

35.....1926
Proposed Rules:
20.....29
30.....29, 275
31.....29, 275
32.....29, 275
33.....29
35.....29
150.....275

12 CFR

205.....1473, 1638
Proposed Rules:
Ch. I.....287
Ch. II.....287
Ch. III.....287
Ch. V.....287
611.....1704

14 CFR

11.....1483
21.....534
23.....537, 1926, 2143
25.....1485
36.....530
39.....231, 873, 1390, 1930, 1935, 1937, 1939, 1941, 1947, 1949, 1951
71.....537, 2145
73.....2146
97.....1393, 1686
121.....534, 1666, 1688
135.....534
Proposed Rules:
39.....291, 293, 295, 297, 299, 1718
71.....552, 889, 1397, 1398

15 CFR

930.....788

17 CFR

36.....1953
37.....1953
38.....1953
39.....1953
40.....1953
242.....232
Proposed Rules:
4.....1463

18 CFR

2.....1348
33.....1348
Proposed Rules:
35.....303
370.....303

20 CFR

404.....2312

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 13, 2006

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; published 1-12-06
Hazelnuts grown in—
Oregon and Washington; published 1-12-06
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Administrative regulations:
Statutory and regulatory provisions; interpretations; correction; published 1-13-06
HOMELAND SECURITY DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Document renewals and issuances; forms and procedures; revision; published 1-13-06
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
California tiger salamander; published 12-14-05
Coachella Valley milk-vetch; published 12-14-05
TREASURY DEPARTMENT
Fiscal Service
Financial Management Service:
District of Columbia, State, city, and county income or employment taxes; withholding by Federal agencies; published 1-13-06

RULES GOING INTO EFFECT JANUARY 14, 2006

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Commercial fishing authorizations; incidental taking—
Atlantic Large Whale Take Reduction Plan; published 1-12-06

RULES GOING INTO EFFECT JANUARY 16, 2006

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pacific Aerospace Corp. Ltd.; published 1-17-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Export programs:
Commodities procurement for foreign donation; comments due by 1-17-06; published 12-16-05 [FR E5-07460]
AGRICULTURE DEPARTMENT
Electric utilities (Federal Power Act):
Hydroelectric licensing regulations; comments due by 1-17-06; published 11-17-05 [FR 05-22677]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Electric utilities (Federal Power Act):
Hydroelectric licensing regulations; comments due by 1-17-06; published 11-17-05 [FR 05-22677]
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 1-17-06; published 12-16-05 [FR 05-24168]
Gulf of Alaska groundfish; comments due by 1-17-06; published 11-16-05 [FR 05-22728]
West Coast States and Western Pacific fisheries—
Pacific coast groundfish; comments due by 1-15-06; published 12-19-05 [FR 05-24205]
COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators annual reports; electronic filing requirement; comments due by 1-17-06; published 12-15-05 [FR 05-23965]
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors; comments due by 1-18-06; published 12-19-05 [FR 05-24198]
Organic liquids distribution (non-gasoline); comments due by 1-19-06; published 12-29-05 [FR E5-08039]
Air pollution; standards of performance for new stationary sources:
Portland cement manufacturing industry; comments due by 1-17-06; published 12-2-05 [FR 05-23419]
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 1-19-06; published 12-20-05 [FR 05-24258]
Maine; comments due by 1-17-06; published 12-15-05 [FR 05-24076]
Missouri; comments due by 1-18-06; published 12-19-05 [FR 05-24201]
Hazardous waste program authorizations:
Idaho; comments due by 1-18-06; published 12-19-05 [FR 05-24202]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sulfosulfuron; comments due by 1-17-06; published 11-16-05 [FR 05-22699]
Various inert ingredients; tolerance exemptions; proposed revocation; comments due by 1-17-06; published 11-16-05 [FR 05-22614]
Toxic substances:
Chemical inventory update reporting; comments due by 1-17-06; published 12-16-05 [FR 05-24138]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations; permitting requirements and effluent limitations guidelines; compliance dates extension; comments due by 1-20-06; published 12-21-05 [FR 05-24303]
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Broadband Internet access services; consumer protection regulations; comments due by 1-17-06; published 10-17-05 [FR 05-20831]
Telephone Consumer Protection Act; implementation—
Unsolicited facsimile advertisements; comments due by 1-18-06; published 12-19-05 [FR 05-24211]
Radio stations; table of assignments:
California; comments due by 1-17-06; published 12-14-05 [FR 05-23804]
FEDERAL DEPOSIT INSURANCE CORPORATION
Risk-based capital:
Capital framework; guidelines and modifications; comments due by 1-18-06; published 10-20-05 [FR 05-20858]
State nonmember insured banks; corporate powers extension; comments due by 1-17-06; published 10-18-05 [FR 05-20768]
FEDERAL RESERVE SYSTEM
Risk-based capital:
Capital framework; guidelines and modifications; comments due by 1-18-06; published 10-20-05 [FR 05-20858]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Cheeses and related cheese products; ultrafiltered milk use; comments due by 1-17-06; published 10-19-05 [FR 05-20874]
Food labeling—
Health claims; consumer perceptions assessment; meeting; comments due by 1-17-06; published 10-19-05 [FR 05-20969]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Pollution:
Marine casualties; reporting requirements; comments due by 1-17-06; published 12-16-05 [FR 05-24125]

INTERIOR DEPARTMENT
Land Management Bureau
Sales preparation; timber; comments due by 1-17-06; published 11-17-05 [FR 05-22779]

INTERIOR DEPARTMENT
Electric utilities (Federal Power Act):
Hydroelectric licensing regulations; comments due by 1-17-06; published 11-17-05 [FR 05-22677]

INTERIOR DEPARTMENT
Reclamation Bureau
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma; comments due by 1-17-06; published 12-30-05 [FR E5-08105]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma; comments due by 1-17-06; published 10-18-05 [FR 05-20786]

JUSTICE DEPARTMENT
Drug Enforcement Administration
Controlled substances and List I chemicals; manufacturers, distributors, dispensers, etc.; registration and reregistration application fees; comments due by 1-17-06; published 11-16-05 [FR 05-22681]

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 1-17-06; published 11-16-05 [FR 05-22642]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 1-17-06; published 12-15-05 [FR 05-24051]
Boeing; comments due by 1-20-06; published 12-6-05 [FR 05-23654]
British Aerospace; comments due by 1-20-06; published 11-21-05 [FR 05-22790]
Fokker; comments due by 1-17-06; published 11-16-05 [FR 05-22589]
McCuley Propeller Systems; comments due by 1-17-06; published 11-16-05 [FR 05-22712]
McDonnell Douglas; comments due by 1-17-06; published 12-20-05 [FR 05-24246]
Airworthiness standards:
Special conditions—
Raytheon Model HS.125 airplanes; comments due by 1-18-06; published 12-19-05 [FR 05-24158]
Raytheon Models B200, B200C, 300, B300, and B300C; comments due by 1-18-06; published 12-19-05 [FR 05-24159]
Class D and E airspace; comments due by 1-15-06; published 12-9-05 [FR 05-23847]
Class E airspace; comments due by 1-16-06; published 11-22-05 [FR 05-23021]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Miscellaneous amendments; comments due by 1-20-06; published 12-21-05 [FR 05-24235]

TREASURY DEPARTMENT
Comptroller of the Currency
Risk-based capital:
Capital framework; guidelines and modifications; comments due by 1-18-06; published 10-20-05 [FR 05-20858]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes and procedure and administration:
Disregarded entities; employment and excise taxes; comments due by 1-17-06; published 10-18-05 [FR 05-20765]

TREASURY DEPARTMENT
Thrift Supervision Office
Risk-based capital:
Capital framework; guidelines and modifications; comments due by 1-18-06; published 10-20-05 [FR 05-20858]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

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H.R. 4340/P.L. 109–169

United States-Bahrain Free Trade Agreement Implementation Act (Jan. 11, 2006; 119 Stat. 3581)

Last List January 12, 2006

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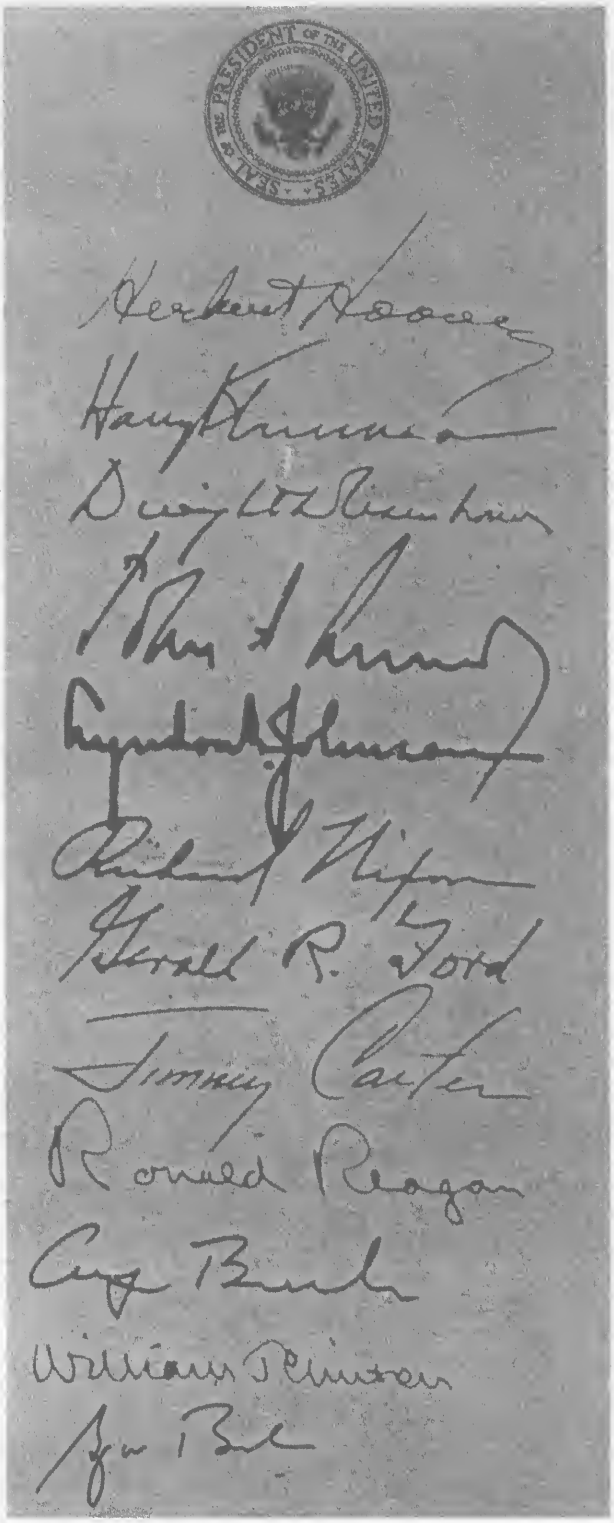

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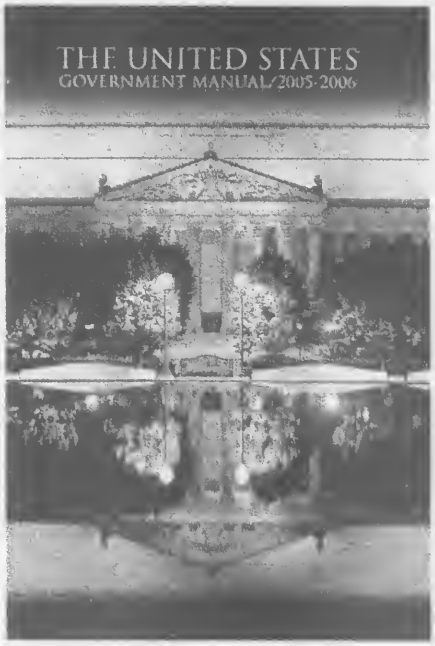

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